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THE CHURCH AND HER SACRAMENTS

NOT long ago, and not for the first time, the suggestion was put forward that the Bull *Apostolicae curae* of 1896, declaring Anglican orders invalid, may eventually come to share the fate of the Decree *pro Armenis*, now acknowledged by most theologians to be devoid of authority.¹ Let it be said immediately that the present article, though admittedly occasioned by this mention of the two famous pronouncements, is not concerned primarily with the question of Anglican orders. The view that this question may at some time be reopened is not held, so far as I know, by any Catholic theologians today. It is true that a number of Catholic writers in the *Revue anglo-romaine*, who for some years had championed the Anglican cause in this matter, continued after the publication of the Bull to hold out the prospect that the decision of Leo XIII might be revoked; but the Pope's stern condemnation of their attitude, as well as his plain statement that "all Catholics are bound obediently to accept his verdict as for ever established, final and irrevocable", forbade the continued entertainment of any such hopes.² If therefore Pope Leo's decision is considered here it is not with any wish to labour a point upon which we differ from Anglicans without prejudice to a sympathetic understanding; nor is it proposed to recapitulate the arguments upon which the Pope based his conclusion and so cover ground that has already been carefully explored. The Bull will be studied here only so far as it bears upon the immediate subject of this enquiry, which is the relation of the Church to her sacraments, and in particular the source from which her decisions in regard to them derive their binding character. The documents mentioned above are rele-

¹ See letter to *The Times*, 22 November, 1949; and cf. *The Church Times*, 1 December, 1933.

² See letter to Cardinal Richard, below, pp. 218-19.

vant, but so too are a few others, and therefore they are all printed hereunder for the reader's convenience, in chronological order:

Decree *pro Armenis* (1439); Denzinger, 695, 701: . . . Ecclesiasticorum sacramentorum veritatem pro ipsorum Armenorum tam praesentium quam futurorum faciliore doctrina sub hac brevissima redigimus formula. . . . Sextum sacramentum est ordinis, cuius materia est illud, per cuius traditionem confertur ordo: sicut presbyteratus traditur per calicis cum vino et patenae cum pane porrectionem. . . .

Council of Trent, sess. xxi (1562), cap. 2; Denzinger, 931: [Sancta ipsa Synodus] praeterea declarat, hanc potestatem perpetuo in Ecclesia fuisse, ut in sacramentorum dispensatione, salva illorum substantia, ea statueret vel mutaret, quae suscipientium utilitati seu ipsorum sacramentorum venerationi, pro rerum, temporum et locorum varietate, magis expedire iudicaret.

Leo XIII, Apostolic Letter *Apostolicae curae* (1896); *Leonis XIII Acta*, XVI, pp. 258-75; *Fontes*, n. 631: §2. Placuit igitur de retrahenda causa benignissime indulgere: ita sane, ut per novae disquisitionis sollertiam, omnis in posterum vel species dubitandi esset remota. . . . §7. Quae cum ita sint, non videt nemo controversiam nostris temporibus exsuscitatam, Apostolicae Sedis iudicio definitam multo antea fuisse; documentisque illis haud satis quam oportuerat cognitis, fortasse factum ut scriptor aliquis catholicus disputationem de ea libere habere non dubitarit. . . . §11. . . . Tum considerantibus Nobis ut idem caput, etsi iure iam definitum, a quibusdam revocatum sit in controversiam, quacumque demum causa sit revocatum; ex eoque primum fore ut perniciosus error gignatur non paucis qui putent se ibi Ordinis sacramentum et fructum reperire ubi minime sunt, visum est in Domino sententiam Nostram edicere. §12. Itaque omnibus Pontificum Decessorum in hac ipsa causa decretis usquequaque assentientes, eaque plenissime confirmantes ac veluti confirmantes auctoritate Nostra, motu proprio, certa scientia, pronunciamus et declaramus, Ordinationes ritu anglicano actas, irritas prorsus fuisse et esse, omninoque nullas.

NOTE.—In what is apparently an earlier text the first sentence quoted from §11 reads: “. . . Tum considerantibus Nobis ut idem caput disciplinae. . . .” (*A.S.S.*, 1896-97, XXIX, p. 202; *American Ecclesiastical Review*, November, 1896, p. 471.)

Leo XIII, Letter to Cardinal Richard, 5 November, 1896 (quoted *D.T.C.*, XI, 1166, from *Canoniste contemporain*, 1897, pp. 380-81): . . . Sunt namque in eius scriptoribus (i.e. *Revue anglo-romaine*) qui eiusdem constitutionis virtutem non ut par est teneant et illustrent, sed infirmant potius tergiversando et disceptando. . . . Consilium fuit absolute iudicare penitusque dirimere. Idque sane perfecimus eo argumentorum pondere eaque formularum tum perspicuitate tum auctoritate, ut sententiam Nostram nemo prudens recteque animatus compellere in dubitationem posset, catholici autem omnes omnino deberent obsequio amplecti, tamquam perpetuo firmam, ratam, irrevocabilem.

Pius XII, Apostolic Constitution *Sacramentum Ordinis*; *A.A.S.*, 1948, XL, p. 1; *THE CLERGY REVIEW*, 1948, XXX, pp. 62 ff.: §1. . . . Ecclesiae nulla [competit] potestas in "substantiam Sacramentorum", id est in ea quae, testibus divinae revelationis fontibus, ipse Christus Dominus in signo sacramentali servanda statuit. . . . §3. . . . effectus qui Sacra Diaconatus, Presbyteratus et Episcopatus Ordinatione produci ideoque significari debent, potestas scilicet et gratia, in omnibus Ecclesiae universalis diversorum temporum et regionum ritibus sufficienter significati inveniuntur manuum impositione et verbis eam determinantibus. Insuper nemo est qui ignoret Ecclesiam Romanam semper validas habuisse Ordinationes graeco ritu collatas absque instrumentorum traditione, ita ut in ipso Concilio Florentino . . . minime Graecis impositum sit, ut ritum Ordinationis mutarent vel illi instrumentorum traditionem insererent. . . . Quibus colligitur, etiam secundum mentem ipsius Concilii Florentini, traditionem instrumentorum non ex ipsius Domini Nostri Iesu Christi voluntate ad substantiam et ad validitatem huius Sacramenti requiri. Quod si ex Ecclesiae voluntate et praescripto eadem aliquando fuerit necessaria ad valorem quoque, omnes norunt Ecclesiam quod statuit etiam mutare et abrogare valere. §4. Quae cum ita sint, divino lumine invocato, suprema Nostra Apostolica Auctoritate et certa scientia declaramus et, quatenus opus sit, decernimus et disponimus: Sacrorum Ordinum Diaconatus, Presbyteratus et Episcopatus materiam eamque unam esse manuum impositionem. . . . Hinc consequitur ut declarem, sicut revera ad omnem controversiam auferendam et ad conscientiarum anxietatibus viam praecludendam, Apostolica Nostra Auctoritate declaramus, et, si unquam aliter legitime dispositum fuerit, statuimus instrumentorum traditionem saltem in posterum non esse necessariam ad Sacrorum Diaconatus, Presbyteratus et Episcopatus Ordinum validitatem.

Without attempting even to summarize the abundant literature on the subject of the Decree *pro Armenis*, one may safely say at least that, although a great number of theologians in modern times regard this pronouncement as unauthoritative or even erroneous, it is by no means universally rejected. Its binding force was emphatically asserted by Billot, for example, who maintained that "nothing but theological prejudice has led a number of writers to reject the ruling of the Decree *pro Armenis*, whose authority has always been fully established in the Church of God".¹ Hugon was no less positive in the same sense.² De Guibert has vindicated the Decree in a series of articles devoted to a study of its history.³ And its full conciliar authority has been vigorously defended in more recent times by Father P. Galtier, S.J., who has few rivals in the field of sacramentary theology today.⁴ "If it is not strictly a definition *de fide*," he wrote six years ago, "it is at any rate a real conciliar decree, promulgated by the Pope in council and therefore issued by the highest doctrinal authority that has ever been accepted in the Church. Consequently the teaching it contains must be recognized as that which the Church has solemnly proclaimed as her own and has imposed as such on those who wish to be received into her communion."⁵

It would seem, notwithstanding efforts to prove the contrary, that the Decree remained unchallenged during the two centuries immediately following its promulgation; its decisions on the sacraments were treated with respect by the Fathers of the Council of Trent, and the great theologians of the Counter-reformation accepted them unquestioningly.⁶ If any doubt arose subsequently as to their validity, therefore, it was not born of any misgivings as to their strictly conciliar character. The authority of the Decree became suspect only when its decisions began to prove embarrassing.

This happened about the middle of the seventeenth century when the findings of historical research confronted theologians

¹ *De sacramentis* (1918), II, p. 302.

² *De sacramentis in communi* (1920), pp. 26-7.

³ *Bulletin de littérature ecclésiastique*, 1919, X, pp. 81-95, 150-62, 195-216.

⁴ *D.T.C.*, VII, 1411 ff.; *Gregorianum*, 1944, pp. 171-85.

⁵ *Gregorianum*, art. cit., p. 184.

⁶ Cf. Galtier, *Gregorianum*, art. cit., summarizing the researches of de Guibert.

with a new problem. Scholars such as Morin and (after him) Martène called general attention to the venerable antiquity of the rite of the imposition of hands in the conferring of Order, and also to the fact that the Greeks, whose ordinations were acknowledged as valid by the Holy See, did not practise the delivery of the instruments. How was it possible to reconcile the certain doctrine that Christ instituted only one sacrament of Order for the whole Church with this divergency of rite between East and West and also, perhaps, between successive periods in the Western Church itself? From this time dates the favour increasingly shown by theologians to the view that in the Roman rite the essential matter of Order has always been the imposition of hands—either alone or with the delivery of the instruments. And it is at this time too that the various theological systems began to emerge by which it was sought, and is still sought, to show how this opinion is consistent with an apparently binding decision of the Church which mentions only the delivery of the instruments as essential. Some have continued to abide by the Decree as authoritative, but restrict its bearing to only one part of the essential matter of the sacrament; others disclaim for it any intention of defining what is the matter and form of the sacrament and see in it only a disciplinary instruction from which the Armenians might learn what were the Roman ceremonies of ordination. Gasparri, finally, whose authority has greatly influenced the trend of modern opinion, cuts the Gordian knot by rejecting as erroneous a decision which he acknowledges to be doctrinal but considers to lack the conditions necessary to make it infallible.¹ According to the Cardinal the sole essential matter of Order is, and always has been, the imposition of hands, and the Decree *pro*

¹ *De essentia sacramenti Ordinis*, pars III. Father Galtier, in the articles above quoted, had lamented the notoriety, not to say the definitive authority, conferred upon these last two opinions by a footnote in the far-famed Denzinger's *Enchiridion Symbolorum* . . . (ed. 1937, p. 253) which, alluding to the Decree *pro Armenis*, ran as follows: "De hac instructione praemittendum est, eam non esse definitionem de ministro, materia et forma sacramentorum, ut multi putabant, sed vel instructionem practicam, vel doctrinam a magisterio ordinario propositam." Incidentally, many a professor of theology has doubtless had occasion to explain that the term *magisterium ordinarium* is used here in the special sense of a non-infallible teaching. In any case, the sentence has disappeared from the latest (1948) edition of this invaluable work, and is replaced by a reference to the articles of de Guibert, mentioned above.

Armenis was mistaken in declaring that it had ever been otherwise.

Billot, then, was clearly right in assigning a doctrinal prejudice as the reason of the changed attitude towards the Florentine decree; and it is equally clear that the prejudice consists in a conviction that the Church is not able to introduce any essential change into the rite of a sacrament. "The Church," writes one of the most recent defenders of this opinion, "has no power to determine or change anything in what pertains to the essence and validity of a sacrament. And this is proved from the teaching of the Council of Trent according to which the Church has no power over the *substance* of the sacraments. Now in the mind of the Council the *substance* of the sacrament means the sum-total of what is required for its essence and validity. It does not mean merely the sacrament considered as a sign of grace and abstracting from its matter and form; *nor does it mean the essence of the sacrament so far as it was instituted by Christ* and abstracting from such essential qualifications or conditions of validity as might be added by the Church."¹ In such a rigid interpretation of the doctrine that Christ instituted the sacraments there is evidently no room for the suggestion that the Church may at some time have added a new and essential element to the sacrament of Order; still less for the even more venturesome idea that she may have substituted a new rite for one already existing; least of all for an authoritative pronouncement of the Church implying that possibility.

Yet this theory of the sacrament as a sacred sign in all cases immutably fixed and determined in its essentials, though defended with an imposing wealth of argument and by theologians whose learning it would be hazardous to discount, remains an opinion and nothing more. Whatever its merits, it can no longer claim with any confidence the support of the Council of Trent. It had long ago been shown by Father Lennerz, S.J., in a survey of contemporary theological opinion and of the views expressed by the Fathers of the Council itself, that the phrase "*salva illorum substantia*" was not intended to condemn the theory, then held

¹ Doronzo, *De sacramentis in genere* (Bruce, Milwaukee, 1945, p. 408). I translate freely, but I think faithfully, from the author's Latin. For the text of the Council of Trent, see above, p. 218.

by some theologians of repute, that the Church may have determined the essential rite of some of the sacraments.¹ But the testimony of the Council will be now even less convincingly invoked for the stricter view, since in the recent Constitution *Sacramentum Ordinis* the supreme theological authority in the Church has given us an authentic interpretation of the famous Tridentine phrase. "The Church," writes the Pope, "has no power over the substance of the sacraments; and this means that she has no power over that which according to the sources of divine revelation, Christ our Lord himself instructed to be observed in the sacramental sign."

And in fact many theologians, understanding the "substance" of the sacraments as Pius XII understands it, have held and still hold that in the case of some sacraments (Order and Confirmation² for example) Christ did not himself determine in detail the rite to be used. These sacraments at least (they maintain) were instituted by Christ in the sense that He appointed the supernatural effects that were to be produced by means of an appropriate rite, but empowered the Apostles and the Church to choose, and even subsequently to alter, the essential elements of the sacred sign itself. On such a view, evidently, the divergency in the rite of Order between East and West presents no difficulty; even essential changes which history may show to have taken place in the Western rite itself will be seen as instances in which the Church has used her God-given power to make them; and thus the authority of the Decree *pro Armenis* may remain unassailed.

The state of the controversy seems to be in no way altered by the Constitution *Sacramentum Ordinis* of Pius XII. And this fact will surprise no one who remembers that it is not the custom of the Church to decide a point that is freely discussed among Catholic theologians except so far as their disagreement may endanger the faith or unsettle the consciences of her children. In only one way could the existing disagreement on Order jeopardize the good of souls, and that is if it broke the bounds of theory and invaded the sphere of practice, engendering doubts or

¹ *Gregorianum*, 1922, pp. 384-419, 524-57.

² For a brief discussion of the question as it affects Confirmation, see *The Teaching of the Catholic Church* (Burns Oates), II, pp. 824-9.

scruples regarding the validity of the sacrament as administered in particular cases. To preclude this danger was the only purpose of the recent Constitution.¹ At least for the future, declared the Pope, the sole essential matter of the sacrament is the imposition of hands; if the delivery of the instruments ever was essential, it is so no longer. Here the authority of the Church is decisive, and all doubt as to what now constitutes the essential rite of Order is at an end.

But as to the past no pronouncement is made. Had the imposition of hands previously, and always, been essential? Was it so determined by Christ himself? Was the Decree *pro Armenis* authoritative? And was the delivery of the instruments ever in fact essential? To these questions, which are of purely theological interest, no definite answer has yet been given.

Therefore *adhuc sub iudice* . . . and the discussion will continue. Would this discussion be more fruitful, I wonder, if we considered more carefully what sort of authority it is that the Church (or the Pope) uses in making such decisions as that of the recent Constitution? To ask whether the pronouncement is infallible is only to becloud the issue. For if you answer that it is, then the Decree *pro Armenis* is retorted on you as inconsistent with it and therefore to be rejected. If you answer that it is not infallible, you appear to question its binding force. And if you answer that it is disciplinary and therefore obligatory, but that the question of infallibility does not arise, you give the impression of stifling doubts to ensure obedience.

Let us, then, clearly distinguish two powers of the Church: her supreme power of teaching revealed truth and her supreme power of administering the sacraments. They have much in common; they may both bear on the same matter; the one may be involved in the other. But they are not the same.

The basic consideration here is that the sacraments belong to the Church. There was nothing haphazard in our Saviour's method of instituting the means of salvation. The sacred and immutable truths concerning God and His relations with men,

¹ "§2. . . causam prae-buit dubiis et anxietatibus in casibus particularibus. . . §4. . . Hinc consequitur ut declarem, sicut revera ad omnem controversiam auferendam et ad conscientiarum anxietatibus viam praecludendam . . . declaramus. . ." See the complete text of the Constitution, *THE CLERGY REVIEW*, 1948, XXX, pp. 62-4.

which He came to reveal, were not to be left a prey to the vicissitudes of unbridled discussion and distortion; He committed them to His Church with the power of teaching them infallibly to all nations. In a similar way, the sacred rites which He instituted as channels of holiness and supernatural power would not be left at the mercy of those who might adulterate their meaning and so frustrate their saving efficacy; He entrusted the sacraments as a precious treasure to His Church with the indefectible power of dispensing them to mankind. In this sense the sacraments are the property of the Church. She did not institute them; but she alone is their supreme accredited minister on earth. This is why it is only within her communion that they are rightfully dispensed; and this is why, although they may retain their validity when administered outside the Church, they do so only on condition that, substantially unaltered, they remain associated with her supreme ministerial authority through the intention of doing what she does. This is the authority to which the Fathers of the Council of Trent appealed as enabling the Church "to make such dispositions and changes in the dispensation of the sacraments—always saving their substance—as she may judge expedient. . . ." It is not an infallible authority to teach revealed truth, it is a divinely constituted power—equally committed to her by Christ—of so regulating the administration of the sacraments that they remain surely and unfailingly the sacred rites which were instituted by her divine Founder.

But if this administrative power of the Church is distinct from her infallible *magisterium* it is by no means divorced from it. The subject matter of each frequently coincides, for the Church can and often does make doctrinal pronouncements concerning the sacraments, their existence, their number, their nature, their efficacy. But the two powers are more closely connected still. When the Church uses her Christ-given authority to make regulations or changes in regard to the sacred rites, although her action is directly administrative and not didactic, it carries with it a doctrinal implication. For it is implicit in such regulations and dispositions that they are made within the framework which Christ immutably shaped, and that the sacrament so regulated and administered is authentically and "sub-

stantially" the rite which He instituted. And because this is a matter in which the Church cannot err such regulations are rightly said to fall within the scope of indirect infallibility. This is not to say that they are certainly and invariably prudent or desirable, though as to this no loyal son of the Church would be in doubt; it means that it is impossible for the Church of Christ to present to her children as a true sacrament of Christ, and therefore as a true sacrament of her own, a rite which is in fact counterfeit.

These principles find ready application in the recent Constitution on the sacrament of Order. It is not a doctrinal definition, setting forth for the belief of the whole Church a truth which God has revealed; that this is not its purpose may be seen in the fact that, although the Pope invokes his apostolic authority, he does so not in order to declare that a particular doctrine has always been true, but only to prescribe what is the essential rite of Order "at least for the future". But although the decree is not doctrinal it is none the less decisive, effectively decisive. The imposition of hands may not have been essential before, but it becomes essential in virtue of this Constitution; the delivery of the instruments may have been essential before, but it now ceases, by the Pope's authority, to be a necessary part of the sacramental rite. Here, then, is an act of supreme authority in regard to the sacraments which, because it is not doctrinal, does not derive its efficacy from the infallible *magisterium*. It can therefore only be an exercise of the Holy Father's supreme ministerial power over the sacraments, of his competence to regulate them according to the pattern of Christ's institution. And yet infallibility is involved; for the Pope's ordinance implies the statement that the delivery of the instruments does not belong to the "substance" of the sacrament, in other words, that it is not something "which, according to the sources of divine revelation, Christ our Lord himself instructed to be observed in the sacramental sign". And so a decision which is in its own right effective as an act of administrative authority, is seen as infallible in regard to the underlying statement it involves.¹

¹ This is the reason why an authoritative decision of the Holy See on the sacrament of Order, though administratively binding only in regard to those of the Roman rite, may bind all the faithful in its doctrinal implications.

On the same principles, and if we accept the more elastic view about the institution of certain sacraments, it becomes possible to vindicate the authority of the Decree *pro Armenis*. A number of theologians, as we have seen, have pleaded its "disciplinary" character in order to reject it; and they have argued from the different sorts of pronouncements ("capitula, declarationes, diffinitiones, traditiones, praecepta, statuta, doctrina") which it contains, in order to suggest that the chapters concerned with the sacraments are not doctrinal but are to be counted as declarations, or precepts, or statutes. Recent studies of the decree do not support the contention;¹ but, however that may be, the question whether this part of the document is disciplinary or doctrinal would seem to lose much of its importance in the light of the effective power of the Church over her sacraments. If *Sacramentum Ordinis* can be decisive without being doctrinal, why not also this section of the Decree *pro Armenis*? On the principles already set forth there appears no reason why we should not say that in this decree the Church is using her supreme authority, not to declare infallibly that the delivery of the instruments was determined by Christ as the matter of the sacrament of Order, but, as supreme minister of the sacraments, to ordain and prescribe that in the Roman rite at that time—whatever may have been the case during the early centuries—the said gesture constituted (at least partially) the essential matter of Order. Inconsistent and contradictory if regarded as doctrinal, the two decrees, that of Eugenius IV and that of Pius XII, would thus be seen as equally decisive and equally infallible: decisive as determining the essential matter of Order for the time, infallible as virtually declaring that the sacrament of Order, whether with or without the delivery of the instruments, remains faithful to the pattern of Christ's institution. It is true that many do not admit that the power of the Church extends to making the change implied; nevertheless the possibility of an intervention of this kind is not excluded by Pope Pius XII: "Quod si ex Ecclesiae praescripto eadem [traditio instrumentorum] aliquando fuerit necessaria ad valorem quoque, omnes norunt Ecclesiam quod statuit etiam mutare et abrogare valere."

¹ Cf. Galtier, *Gregorianum*, art. cit.

Turning to consider the Bull *Apostolicae curae*, we are now perhaps in a better position to indicate the grounds upon which Leo XIII could claim an irrevocable character for his decision. In the first place it will be observed that this verdict, though also concerned with the validity of Order, is not on the same level with the decrees so far examined. Hitherto we have seen the Church prescribing *de iure* or in principle what is necessary for the validity of ordinations according to the Roman rite. In the present case the Pope decides not on a question of principle but on a question of fact: Was the Edwardian rite of ordination such as would confer the effects of the sacrament of Order? He was not asked whether it conformed in every detail to that used in the Roman Church. Obviously it did not. What he had to determine was whether the rite submitted to his examination, however widely differing from the Roman rite and indeed from many others which the Roman Church nevertheless acknowledges as authentic, was in fact a sacrament of the Church of Christ. With the purpose, as he subsequently declared, of settling the question once and for all, he decided that it was not.

An *ex cathedra* definition? Obviously not, since the invalidity of Anglican orders is not contained in the sources of divine revelation. But that it is a matter intimately connected with revealed truth can hardly be denied, and therefore a number of theologians have assigned it to the category of "dogmatic facts": of those historical facts, namely, upon which the Church's *magisterium* requires that she should be able to pronounce infallibly. The classic example is that of the five propositions taken from Jansen's *Augustinus*, in connexion with which it was established that the Church can declare infallibly, not only that a doctrine is heretical, but also that the heretical doctrine is expressed in a particular book.¹ The suggestion having been made by Father Sydney F. Smith, S.J., that Leo XIII pronounced on a dogmatic fact,² the Abbé L. Marchal, writing some twenty years later on the same point,³ demurred on the ground that there is no parity between the Constitution of Clement XI, which was concerned with a matter of doctrine, and the Bull of Leo

¹ Constitution of Clement XI, *Vineam Domini*. Denz, 1350.

² *Dictionnaire de la Foi Apologétique*, III, 1224.

³ *D.T.C.*, XI, 1166.

XIII which, as its author specifically declares, deals with a matter of discipline: "idem caput disciplinae, etsi iure iam definitum". The writer then concludes, somewhat indefinitely, that "les décisions prises par le chef de l'Eglise sont obligatoires même si elles ne sont pas infaillibles".

It would be interesting to know how many other authors have based their argument against the infallibility of this decision upon the words "idem caput disciplinae"; for the argument is a very frail one. As the present writer pointed out four years ago, the word "disciplinae" was indeed printed in the earlier edition of the Bull, and it was on this earlier text that the first vernacular translations were founded; but the word had disappeared by the time the official text was published in *Leonis XIII Acta* in 1897, where we read "idem caput, etsi iure iam definitum".¹ The reason of the omission can only be a matter for conjecture; but it may well have been designed to counter the manoeuvres of the Catholic writers mentioned by Leo XIII in his letter to Cardinal Richard, writers who considered the decision to be merely provisional.²

Great importance, perhaps, need not be attached to this point of textual criticism; but the omission of the word does in some measure strengthen the case for the infallibility of the Pope's decision, without being by any means necessary to establish it. In the early part of the Bull the word "disciplina" is often used to mean the unvarying juridical practice of the Holy See in regard to Anglican ordinations; a practice from which the Pope concludes that the question of their validity had long ago been settled.³ If the word was in fact purposely omitted in connexion with the Pope's final verdict on the matter, it was perhaps because his decision was not intended to be merely one more official act in continuance of the Church's juridical practice, but, instead, was meant to declare authori-

¹ See *Anglican Orders*, a new translation of *Apostolicae curae*, C.T.S., H. 311, p. 22, translator's note; see also Dr Messenger's comment, *ibid*.

² See above, pp. 217, 218.

³ E.g. §1: "... defecisse verum Ordinis sacramentum quale Christus instituit ... iam tenuit communis sententia, quam non semel Ecclesiae acta et constans disciplina firmarunt. ... §6: Auctoritates ... aperte ostendunt initia eius disciplinae quae tenore constanti, iam tribus amplius saeculis, custodita est, ut ordinationes ritu eduardiano haberentur infectae et nullae; cui disciplinae amplissime suffragantur testimonia multa. ... In huius disciplinae observantia vis inest opportuna proposito. ..." *Fontes*, III, 495, 498.

tatively the ground on which that constant practice had been based. The "disciplina" tells us only that Anglican orders had always been *treated* as invalid. The Pope tells us that ordinations performed according to the Edwardian ordinal are in fact invalid; in other words that the rite it contains is not the sacrament of Christ and of the Church.

It will be noticed that this is precisely the type of statement we have seen to be implicit in the Church's exercise of her power over the sacraments. Whether she uses that power in order to decide that the faithful are to communicate under one kind only, or to prescribe what is the essential rite of Order, or to proclaim that the Greek ordinations are valid, it is always the same statement of fact that is involved: namely, that the rite which she regulates or prescribes, the rite which she acknowledges as valid, is Christ's sacrament, and her own. And what is this, if not a dogmatic fact? A theological work, such as Jansen's *Augustinus*, is a sequence of words purporting to convey some truth about God and His relations with men; and in regard to this, as all theologians agree, the Church is able to pronounce infallibly that it does not conform to the substance of what God has revealed as true. A rite of ordination, such as that of the Edwardian ordinal, is a gesture accompanied by a form of words purporting to signify, and therefore to produce, a supernatural effect which Christ has attached to it. In regard to this, similarly, the Church is able to pronounce infallibly that it does not conform to the substance of the sacrament of Order as Christ instituted it. Is not the parallel complete? It would seem to make very little difference, therefore, whether we regard Leo's decision as disciplinary or doctrinal. In either case the dogmatic fact is there; in a disciplinary decree it is implied, in a doctrinal pronouncement it is explicit. Pope Leo XIII, therefore, could decide infallibly on the invalidity of Anglican orders because he was deciding—no matter whether virtually or explicitly—on a dogmatic fact.

In this controversy the word "discipline" plays a mischievously ambiguous part. It is an over-simplification to make it mean the provisional as opposed to the final, the behaviourist as opposed to the true, the fallible as opposed to the infallible. So far as the present subject is concerned let us, if you will,

regard the power of the Church over her sacraments as disciplinary, if disciplinary means all that is not specifically and directly doctrinal. But let us also bear in mind that the Church which Christ founded as the faithful custodian of His sacraments cannot, in the discharge of that function, belie her office as the infallible teacher of His inviolable truth.

One word more. Sacramentary theology, like ecclesiology, has been relatively tardy in its development; that which is most familiar to Catholics in practice is the last thing they begin to speculate about. But the stability or the fluctuation of theological opinion on the sacraments is not the yardstick by which we must measure the Church's fidelity in guarding them. Whatever view a Catholic may hold on the debatable points discussed in this paper, he is confident that the sacraments are safe in the Church's hands; for they belong to her and not to the theologians who theorize about them. Outside the one Church of Christ revealed truth is fragmentary and insecure, inside its integrity is guaranteed. Outside the Church the sacraments are precarious, inside they are both safe and sound. And this is the reason why Leo XIII, after delivering his verdict on their orders, addressed to Anglicans a fervent appeal which for apostolic urgency and understanding charity has rarely been surpassed:

Let them return to His one fold, and they will obtain both the blessings they seek and the aids to salvation which are their fruit; blessings and aids of which He has himself appointed the Church His almoner, the perpetual guardian and promoter of His redemption among the nations. Then will they "draw waters with joy out of the fountains of the Saviour", that is, out of His wondrous sacraments. . . . To those who truly thirst after these blessings may "the God of peace, the God of all consolation", grant them in overflowing measure, according to the greatness of His bounty.

G. D. SMITH

THE COWPER-TEMPLE CLAUSE

CATHOLICS throughout the country have put up a magnificent fight during the last few months for a further instalment of distributive justice in respect of their schools. It is too early to assess the results. Clearly, however, complete victory is not yet in sight, and another intense effort will be necessary not only at every by-election, but especially at the next general election or when an amending bill is mooted. It is of the first importance that priests should lead the laity in keeping fresh for many years ahead the interest which the recent campaign has so successfully stimulated. In readiness for the next one we should encourage the study by our educated laity of the theological and psychological reasons underlying our demands for Catholic Schools and also the understanding of the historical roots of all types of education in this country. It is in the hope that such studies, suitable, for example, for C.P.E.A. groups, may be maintained, that this article is offered to the clergy on a topic which is truly the hidden core of opposition to Catholic claims.

From the year 600, when the first Christian school was opened, until 1870, education, with few exceptions, was Christian. After 1870 it became progressively more secular. The point in time at which this serious deviation in English educational traditions took place was the passing into law of the Cowper-Temple Clause ". . . no catechism or religious formulary which is distinctive of any particular denomination shall be taught" in the new schools established by means of local rates. This clause has remained the basis of religious teaching in all State schools and it is substantially re-enacted in clause 26 of the 1944 Act. This reads:

The religious instruction given to any pupils in attendance at a county school . . . shall be given in accordance with an agreed syllabus adopted for the school or for those pupils and shall not include any catechism or formulary which is distinctive of any particular religious denomination.

By the vast majority of people interested in education this

clause is regarded as enshrining an almost sacred tradition, which even the Legislature may not over-ride. This feeling of tradition, too sacred to touch, seems to be one of the principal reasons why Government circles and the general public do not wish to consider the application to English Catholic schools of the Scottish Scheme. The latter, incidentally, was set up by the Education (Scotland) Act of 1918 and allows new denominational schools to be built, equipped and maintained entirely out of public funds.

It is worth while considering the background of this famous Cowper-Temple Clause and trying to assess its value as a tradition. Strangely enough, the clause appealed to very few when it was first introduced as a private amendment tabled by the Member for South Hampshire—Mr W. F. Cowper-Temple. It would have been swept away with innumerable other amendments, but for the fact that the Government decided to adopt it as a Government measure designed to cut the Gordian knot of acute and bitter religious controversy over the Education Act. It was a compromise. It was recognized as a compromise and accepted only because the Government made it clear that to reject this amendment, incorporated as clause 14 of the Bill, would be to reject the whole Bill. Its background must be seen in the light of the bitter hostility to Anglican schools on the part of the Dissenters, especially vocal in the Birmingham Education League under the leadership of Mr George Dixon, M.P. for that city. Mr Forster's original Bill left to the local school boards the right to decide the type of religious instruction to be given in the new schools, subject, of course, to a strict conscience clause. This arrangement would obviously have paved the way to the establishment out of public funds of denominational schools, perhaps on the lines adopted over a generation later by Scotland. The opposition, however, of the Birmingham League and of the Nonconformists in general, who were among the principal Government supporters, forced the Cabinet to amend the Bill in June. On the 16th of the month, Gladstone, the Prime Minister, in introducing the Committee stage of the Bill, announced important changes which, as Disraeli pointed out immediately, really constituted a new Bill. Among these changes the School Boards were to be prohibited from assisting

voluntary schools out of the rates, while the new School Boards were to be subject to the Cowper-Temple Clause.

The opposition to this new Government compromise gathered at once from both sides of the House. The attack was led by the Leader of the Opposition. Disraeli's acute mind, although fully approving of the Education Act in itself, immediately seized the extraordinary implications of the Cowper-Temple compromise. In the course of a measured and carefully worded speech, he said :

. . . Although no creed nor catechism of any denomination is to be introduced, yet the Schoolmaster would have the power and opportunity of teaching, enforcing and explaining the Holy Scriptures when he reads. Now he cannot do that without drawing some inferences and some conclusions, and what will these inferences and conclusions be but dogmas? They may not be the opinions of the Rector, nor of the Presbyterian Minister, nor of the Nonconformist Minister, but they are the opinions of the Schoolmaster . . . You will not entrust the Priest or the Presbyterian with the privilege of expounding the Holy Scriptures to the scholars; but for that purpose you are establishing a new sacerdotal class. The Schoolmaster who will exercise these functions, and who will occupy this position, will be a member of a class which will, in the future, exercise an extraordinary influence upon the history of England and upon the conduct of Englishmen.¹

Forster contented himself with a mere denial of this implication. The challenge thus thrown out by Disraeli was, however, taken up again and again in the House. Mr Gathorne-Hardy was even more blunt in his attack and in his insistence that religious teaching in schools could be given only by those who had clear-cut, i.e. dogmatic, belief.

You are about to do away with the whole protection of creeds and formularies, and you are going to give to the Schoolmaster unlimited power of teaching whatever he pleases. Of all people the Schoolmaster is the last who ought to be entrusted with such power . . . the only way out of this difficulty is, I quite admit,

¹ *Hansard*, Parliamentary Debates, Vol. CCII. 298/g. 16.6.70.

freedom of religious teaching or no religious teaching at all. Religious teaching in some form is what you say you desire. I think you should have freedom of religious teaching, in a form that is acceptable to those who have to do with schools; and the only way of having that is that the Managers should appoint a Schoolmaster, knowing what he is and that he would teach what he believes.¹

Mr Gathorne-Hardy clearly saw that there was no true religious teaching unless it were denominational in character and he took the same view that the Managers of the new Board Schools should appoint the teachers in whom they had confidence from the religious point of view, a system which would have enabled a School Board to establish separate Church of England, Catholic and Wesleyan schools wherever numbers were sufficient. Lord John Manners took the same view. He pointed out that there were 4,190 denominational schools (Church of England, Catholic and Wesleyan) and only 244 "British and Foreign" schools which had the same kind of indeterminate religious teaching as that advocated by Mr Cowper-Temple. The Government attitude was thus tantamount to endowing schools of the "British and Foreign" type despite the fact that tradition was heavily against them. He added:

Yet the 14th clause (Cowper-Temple) as it stands in the Bill prohibits local Boards from establishing any of these denominational schools, the popularity of which is proved by their number, and compels the Board to choose between secular schools on the one hand and British and Foreign schools on the other. In the name of freedom of religion . . . I protest against this system. But then we are told—"Oh, we do not mean to exclude religion, but we will not allow the use of a catechism or other formulary." The meaning of this is that the teachers may teach the Catechism out of the Bible, but they are not to teach the Bible out of the Catechism. It is as if in one of the superior schools it was said, "Oh, yes, we teach languages, but we do not allow the aid of a grammar, dictionary or lexicon."²

So the discussion dragged on, night after night into the early hours of the morning, and *Hansard* makes interesting,

¹ *Hansard*, ccii. 528. 20.6.70.

² *Hansard*, ccii. 848. 23.6.70.

though, for a Catholic, somewhat pathetic reading. The last word on this subject was said by Mr Horsman on the 24 June:

What security will you have that your Schoolmaster will open his Bible except when he reads to the children, or that the Schoolmasters may not have creeds of their own containing not 39 articles, but 139? The right hon. Gentleman the Member for Buckinghamshire (Disraeli) said the other day that we were about to establish a new sacerdotal class. I think we may, under the Bill, also establish new sacerdotal creeds, with a separate creed for every school.¹

Some Members of Parliament approached the matter from a rather different angle, that of justice to the voluntary schools. One Member for Manchester, Sir Charles Adderley, who sixteen years earlier had unsuccessfully introduced an Education Bill to the House, insisted that it would be only just that ratepayers compulsorily subscribing to the new Board Schools of which they did not approve under the Cowper-Temple arrangement, should be allowed to deduct from these rates the subscription they made to their own voluntary schools. He said:

My own proposition, as contained in the Amendment of which I have given Notice (subsequently defeated in Committee) is that ratepayers voluntarily subscribing to public elementary schools, approved by the Education Department in any district, shall be entitled to deduct such subscription from any contribution to the local rates made for a School Board . . . Where rates and subscriptions are pitted against each other, the latter always give way; and in this case the choice to everyone will be between paying rates alone or rates and subscriptions.²

Strangely enough, strangely, that is to say, in retrospect when we view the tremendous Catholic burden of paying twice over for our schools, Mr W. E. Forster, the father of the 1870 Bill, agreed quite explicitly that there was an injustice here that had to be met. He stated in the House on the 20 June:

. . . there are important minorities who very much prefer catechisms and formularies . . . We think they should be con-

¹ *Hansard*, ccii. 923.

² *Hansard*, ccii. 638. 21.6.70.

sidered, and *when we take their money to support schools they do not approve of, we should give them some equivalent; in fact, when we take their money, we are bound to give them back that education for which we make them pay.* There is a class who wish for Catechism schools, and there is another class who though they might not object to a school which was not denominational, yet would prefer one that was, and of their own connexion. We have always felt that we have to meet these two classes . . . We could not resist the conclusion that it was our duty to assist those ratepayers who preferred denominational teaching, and we have to assist them all the more now that we have assented to the principle of the Amendment of the right hon. Member for South Hampshire.¹

How well this sounds on the lips of a Minister of the Crown proposing an Education Act! Why was it not carried out? All Forster did to discharge his conscience in this respect was to increase the Government maintenance grant to voluntary schools by quite a slight margin which was swallowed within a few years by the steep rise of costs due to the competition of the more lavishly provided Board Schools. It is important, however, to note that the Minister who forced through the Cowper-Temple Clause was aware of its grave injustice and of the Government's duty to make amends for it.

Thanks to Government pressure, and despite keen and protracted debates, the Bill became law, and Cowper-Templerism was born. It is really surprising that this should have been the case. Catholic opinion in 1870 was not really powerful enough to make itself effectively felt although the Catholic position was mentioned once or twice in both Houses. The real reason why the clause became law is to be found in the attitude of the Anglican Church, as Gladstone and Forster had obtained the consent of the Church of England to this compromise before it was proposed to the House on the 16 June. Gladstone made it clear in the course of the debate that the Anglicans had conceded much. He asked the House to appreciate their willingness to compromise in the interests of peace. Looking back nearly a century later, we cannot but feel surprise at this willingness and can only surmise that they did not realize the magnitude of the concession they were making. Had the Anglican

¹ *Hansard*, ccii. 592.

Church held firm, for they were still in a strong position in 1870, a compromise of quite a different nature could have been reached, and it would surely have been possible, at least in the urban areas, for Board Schools to have been erected for each of the bigger denominations as well as for those of no denomination at all. What a tremendous opportunity was flung away without even a fight! Their empty churches are the silent but grim commentary on their extraordinary concessions in 1870.

Looking back upon the debates, one cannot help feeling how unreal they really were. With very few exceptions the Members of Parliament responsible for the 1870 Act wanted, and firmly wanted, religious instruction in school. They wanted their new elementary schools to be rooted in the Christian moral tradition and in the reading and expounding of the Bible. They were pre-occupied by the noisy and clashing interests of Anglicans and Dissenters, and they did not see the rising tide of sheer indifference and paganism that was to sweep the country in the next two or three generations. They tried to prevent religious strife in schools by the Cowper-Temple compromise, and they did not see that this compromise would pave the way to the overthrow of all real Christianity. Yet this has been the result. If England can no longer be called a truly Christian country, is it not obvious that the 1870 Education Act is largely to blame? As early as 1888 the writing was already on the wall in the report of the famous Cross Commission appointed two years earlier to inquire into the working of the Education Act. The Commissioners found that in the voluntary schools religious instruction was effective, intelligent and practical. They found that in the Board Schools there were a number in which no religion was taught at all and "not a few" others where the religious training was limited to a few minutes daily Bible reading. The Commissioners came across cases where teachers thought that the Cowper-Temple Clause prevented them from referring to Christian things, or even from mentioning the name of God while teaching ordinary secular subjects, while there were some who thought that they would break the law if they sang the National Anthem outside the times devoted to religious teaching.¹ This was but the begin-

¹ See final report of "The Cross Commission 1888", pp. 115-19.

ning, and by 1940 religious instruction in almost all State schools had been reduced to a few Bible stories devoid of all really Christian value. In 1870 the vast majority of serious-minded and educated Englishmen read their Bible with reverence and profit, and this was the context of the Cowper-Temple compromise. Today such men are an insignificant minority.

It does not seem too fanciful to say that the true spirit of the Cowper-Temple Clause is long since dead. The negative aspect of this clause, its prohibitions, its limited and cramping effects, remain, but the good work it was intended to do, namely to maintain Christian teaching in State schools while removing the conflict of rival creeds, seems to have gradually faded away as the twentieth century progressed. This is so true that the 1944 Act has had to link with the Cowper-Temple Clause (No. 26 of the 1944 Act) the obligation at all State schools of both religious worship and instruction in accordance with an agreed syllabus. The mere fact of an agreed syllabus, itself another form of religious compromise, is fundamentally at variance with the original spirit of clause 14 of this 1870 Act. The words, it is true, remain, but the spirit has gone. There is, too, another, and more legal, aspect in which this clause is dead. In 1902, after a long and bitter debate through two sessions of Parliament, Balfour's Education Act became law and enacted that voluntary denominational schools should be fully maintained out of the rates. It was this very fact that the Cowper-Temple Clause was designed to prevent.

In conclusion, it must be admitted that the Scots were wiser in their generation than their English colleagues in the House. The 1870 Act did not apply to Scotland, and Scottish Members passed their own Act in 1872. Even in the 1870's the Scots were a more deeply religious people than the English, and precisely because they were more religious they would have nothing to do with such a compromise as was presented by the Cowper-Temple Clause. The Scottish Education Act of 1872 simply required all School Boards to have "due regard to the religious belief of the children's parents" (clause 67 (2)). Uninhibited by the ghost of Cowper-Temple, the Education (Scotland) Act 1918 solved the religious problem, once and for all, and apparently to the satisfaction of all concerned. Thanks to this settle-

ment, all Scottish schools both elementary and secondary and of whatever denomination are, in effect, State schools, fully maintained and either purchased or built by public authority, yet retaining their full denominational character with ample safeguards, not only for religious instruction, but also for the type and religious qualifications of the teachers concerned.

Have our politicians nothing to learn from our friends across the Tweed? Must they continue religious strife and ever-growing financial persecution when an admirable, just and smoothly working system has been devised and made law in the same Parliament? Why should the ghost of an unsatisfactory and fundamentally unwanted and unworkable compromise, for surely that was and is the Cowper-Temple Clause, still lay its cold and deathly hands upon the Christian education of this country?

BERNARD RICKETT, A.A.

OUR SCHOOLS

ARE WE SATISFIED WITH THEM?

THERE is always a danger that an accepted truth may become a mere shibboleth, if it was never more than a valuation of something or other imponderable, not subject to outside tests, to weighing and measuring, or ascertainable from a known and trusted external authority. We have received from those who went before us an exalted notion of the worth and importance of Catholic schools. It has been the accepted thing that the school should be built before the church or the presbytery, and the priest who followed that order was sure of the appreciation of his fellow-priests, and of authority.

Far be it from us, at this stage at any rate, to suggest that this attitude does not represent realities but only shibboleths, but it will soon become certain that it pre-supposes a lot which may or may not be true. We might do worse than take stock of

the position now in a spirit of ruthlessness, especially as our official policy has moved far from the previously recognized minimum standards laid down for acceptable Catholic education.

Was it ever Catholic education in fact? Or was it the standard State-provided education with a top-dressing of catechism, plus a certain amount of neutralization of anti-Catholic prejudice and poison? Is that Catholic education, even if it includes provision of Catholic teachers? There is room for many doubts behind these questions. It would be easy to draw up a syllabus of Catholic education, the real thing, with Christ and his teaching firmly in the centre, radiating divine light over the whole field of studies, the result of which would be a pupil with a totally different set of values in his mind from the child who now completes a course of education in our Catholic schools.

The thing has in fact been done—on paper, as many Catholic educationalists know. It matters little to have cleared “bloody Mary” out of history text-books, if the legend of Protestant greatness is still firmly embedded there. Drake’s drum is as much a part of the Protestant legend as the Ulster drum. If Protestant, infidel and materialist standards pervade the whole curriculum and point every lesson, it hardly becomes Catholic education because of an hour’s catechism every day. Patriotism has been called the religion of the English, and there used to be much more truth than error in the description, but a true Catholic education would balance patriotism with universalism, with Catholicism in fact. To be brief—can there be real Catholic education without a Catholic curriculum or syllabus of studies? Are we deceiving ourselves and our people if we think there can be?

Take another acid test of the reality of Catholic education as it exists in the primary schools, and will exist in the secondary schools of tomorrow. If it is a reality why are we so frightened of the impact of life as it is in England on our pupils? We are for ever segregating our people into Catholic societies, Catholic trade unions, and organizations of every kind which merely duplicate national organizations. The danger to their Faith is the reason readily on the lips of everybody. But their schooling, their education and instruction, should have prepared them to

meet all these dangers without more than an occasional lapse. Why, if we are to be the light of the world, are we for ever trying to put the light under a bushel? If we are the salt of the earth, must we not be mixed into the masses? If we are the yeast, must we not be worked into the dough, and not kept segregated from it?

It would seem that we have little confidence in the value of the education we have given at such a cost. The proportion of mixed marriages which we deplore as excessively high, the rate of loss through lapsing, which is perhaps fifty per cent of those we educate, shows that we are not getting money's worth. The readiness of our people to swallow propaganda from Socialists, Communists, as well as Capitalists, does not argue well for their power to think for themselves in the light of the Faith. Every priest pays lip service to the ideal of lay councils to help him with his fabric fund, his development plans, his general financing, but how many priests find that there are enough laymen of sufficient education to be any real help? Is it not a fact that we can find hardly any such among the products of elementary education, and that it is amongst those who had secondary education at one of our big boarding and day schools that we must search for educated helpers, and then not often in sufficient numbers?

It remains to be seen whether the plan for secondary education will really provide secondary education, or only a slightly developed elementary or primary education. At present we can hope that it is a step in the right direction. We must confess that so far State-Catholic education has not helped much. The readiness of our layfolk to send their children to schools at which they must pay fees for them does not augur well for their estimate of the worth of State-Catholic education. Why is it, too, that children from good homes seem none the worse, very often, for not having been to a Catholic school?

We have not been able to follow the directions of the Holy See about segregating boys and girls in schools, but have we not paid for our inability? Do we not find in fact that boys and girls educated together do not inter-marry? There is no romance in meeting again one with whom they were educated, one whose childish faults are still remembered, together with the unaffec-

tionate nickname which still lingers. Are we not too sure sometimes that the Church is requiring too much in preferring sex segregation in schools? Moreover our one school for all classes has been a psychological error, however unavoidable.

Society in this country is stratified in superimposed layers, the broader layers being at the bottom, where our majority live. Are parents, trying desperately hard and at great sacrifice to keep their children a cut above the lowest, so very wrong when they are apprehensive about letting their children mix with those whose unofficial English is a proof of natural bi-lingualism, with a touch of roughage and profanity thrown in? Is it wrong for them to object to their children being taught by example bad words, bad manners, and even bad habits in the school after keeping them above these things, or away from them, at home?

Catholic parents must foot the bill when we present the cost of our schools. Have we tried to provide what they want? Then is it the consciousness that we have not done so, that we simply cannot do so whilst we are geared to the State system, that has made us frightened by the size of the bill we must now face? We are frightened, without a doubt. If our education, State-Catholic education, were admittedly worth anything within our power to pay, short of financial extortion, would it not have been easy, or relatively easy, for the Bishops to call on every adult Catholic in the country to let them have £5 a year for the next five years? Certainly more than half the estimated cost of the Development Plan would thus be met. We have to ask ourselves seriously why the Bishops cannot feel any confidence that this call would be met, and the answer will certainly include general consciousness that the education offered is not worth the price asked. If it be not the whole answer.

The State, which can be efficient and freedom-observing only if it restricts its action to the universal and general level, has descended to minute control of education and much else. It is plain, though, that you cannot usurp functions without being led to usurp and deny rights. If the State limited itself in primary education to defining what it requires for citizenship, and in higher education acted through the examiners and their boards, there would be room for a Catholic syllabus of educa-

tion. We have our own examiners for Scripture. The idea would be worthy of extension into other spheres. Provided our syllabus proved its worth to the community Government should be satisfied. At present only the age-level of children varies the teaching; all children at one age-level are taught the same thing in the same way. That nullifies the vocational education of children and the rights of parents to secure it. Our demand for the Catholic education of our children is, after all, nothing more than the claim that they should receive vocational education.

We have never advanced a counter-claim to the ever growing demands of the State upon us. We tacitly accept that we must make concessions in exchange for increased financial aid, but that is true both ways. If we agree to increased costs we have a right to concessions, and in the sphere of syllabuses they would pay a dividend which we badly need. It is arguable that it would be worth the cost of fifty million pounds to be quite free to establish a Catholic curriculum in all our schools. American Catholics, who run their schools without State aid, cannot understand our grievance about what appear to them marginal costs, but they have what we have not, freedom to draw up their own syllabus. They do more than proportionately well in the public examinations, and on the east coast their schools are rather the standard by which other schools are judged than the reverse. Besides, they are not up against an official version of history, an official version of other subjects as well, opposed to the Catholic faith, as we are, and they are financially better off. State-Catholic partnership there in education would not be so harmful from the Catholic viewpoint as it is here, though inevitably conflict would come, unless the American State became permeated with the Catholic idea. And that is not too unlikely. At any rate most American soldiers in the late war made a braver face about professing their religion than our men did.

Their schools gave them a spontaneity about their religion which ours did not. Our men had a sense of inferiority which should not survive a thorough Catholic education. Since our people are convinced that it is only in religion that we have any superiority over the general public in these parts, it is obvious

that the more Catholic our education can be made to be, and to appear, the more immediate would be the response of the Catholic public. It does seem to the writer at least that it is just because our education is not Catholic, but State-Catholic—with the State in almost absolute control—that our people are not ready for the huge sacrifices now demanded of them. They do not see the advantages of the system, and we cannot produce and prove them, which means that our school system is condemned to a slow death unless we have a revolutionary change in our attitude and policy.

We have the same ten per cent of Catholics in the Borstals and prisons which is our percentage amongst the general population. Does that prove the excellence of our education? To what can we turn to demonstrate to our people that they are fully repaid the great sacrifices they have made for Catholic schools? Lapsing could scarcely be higher than it is without extinguishing us in a generation or two, divine intervention apart. Birth-control and other modern evils may not be quite so bad amongst us as amongst the general public, though the morals of the lapsed half of our population seem no better than the worst outside our ranks. "By their fruits ye shall know them." On that basis it is suggested that the question is ended. The Catholic primary schools are a poor investment, returning no dividend at present, but perhaps worth locking away. If Communism does not come, a change of heart in our political circles must, and some measure of freedom be returned to us.

When *The Times* called for religious education of youth some years back it prepared the way for the agreed syllabus of religious training in the schools, and shook many Nonconformists in their conviction about secular education, with a top-dressing of Sunday-school teaching, being satisfactory. It was worth noting, though, that *The Times* never proposed the moral superiority of the Catholic body as an evident proof of the value of religious education, and that no Catholic advanced that proof in the discussion which followed. That means only that we are the subjugated partner in the State-Catholic system, for proper and real Catholic education would make a marked difference.

The writer has proposed these considerations to his fellow-priests for their consideration. They are the unspoken thoughts

of the educated laity, though, and they will expect an answer to the many questions set here before we get a united front. Is there any need to say that the writer is utterly devoted to the cause of Catholic education, appreciative of the work that is put in, and quite inflexible in loyalty to every Church authority? What is written here is query rather than criticism, fact-finding and not fault-finding, anxiety and not querulousness, concern and not captiousness.

BERNARD GRIMLEY

ON LEGAL BACKGROUNDS

THE lawyers of fiction are almost universally uninspiring. They have "dry" coughs; they have "parchment-like" faces; they work and live in "musty" or "cobwebby" chambers, which are usually "dimly-lit by windows thick with the grime of years". Include a "beetling" brow or two, and there you have the recipe for as typical a lawyer as ever Dickens could concoct. We expect these things of our novelists, and how disappointed we are if our dry man of law is not as dry as dust! The result, of course, is that we find it difficult to be enthusiastic about law itself: even about Canon law. We accept without hesitation the laws which the Church, in her wisdom, imposes upon us; we obey them with that reverence and submission which they merit. All that is true, but there is often a lack of spontaneity in our interest, and we look, perhaps, not very much further than the printed page of the Code, the Instruction, or the Reply. This is regrettable, since so much of our lives as priests is concerned with the law. The difficulty or disadvantage we have is a fundamental one, and we must overcome it if the law is not to become for us something "stale, flat, and unprofitable". This article is offered to priests in an attempt to indicate a possible way of achieving this end, and one would like to express the hope that if Benjamin, in trying "to lead", still appears to be *in mentis excessu*, it will be forgiven him!

Everyone agrees that Canonical studies are attracting more and more attention at the present time. The reports of the increasing numbers of Canon law students in Pontifical Universities and Faculties all over the world are themselves sufficient evidence of the growing interest in and preoccupation with the law. In view of this fact, we are forced to examine our own appreciation of the law. Many of us, some more vividly than others, can remember the sinking feeling we experienced in the examination-room, when all our efforts at strategic retreat came to nothing before the inevitable poser "Quid autem dicit Codex?" Now the word "Codex" may be taken as pin-pointing the difficulty of an Englishman's approach to Canon law.

English people, and people whose legal tradition is the same as ours, are not Code-minded. This is the result of our great legal history, for we have never had, in non-ecclesiastical matters, any one official Code of private law. The Common law of this realm, basically Christian and excellent though it is, cannot be described as a "system" in the strict sense of the word. It has been growing for eight centuries as the custom of the King's Court, which is to be found in the judgements of the King's Justices.¹ Indeed, the growth has been facilitated by the lack of any tendency to codify. Sir Henry Slessor, a Lord Justice of Appeal, gives the reasons of common lawyers against codification.

In the first place (he says), if regard is to be had to tradition and the development of relations between man and man through the ages, it may be said that the whole temperament of Englishmen towards their law . . . has been based upon the empirical method of dealing with problems as and when they arise; there has always been a desire to refrain from over-definition and proleptic law. . . . Secondly, there can be no doubt that a system of decision according to principle and authority derived from actual experienced issues is far more elastic and organic in its nature than is the occasional and necessarily infrequent promulgation of law didactically by a legislation which leaves no room for change between one issue of a code and the next. . . . In judge-made law (the) capacity for adaptation of old usage, which

¹ Cf. *The Common Law of England*, by a K.C. (cf. *THE CLERGY REVIEW*, December 1948, p. 430).

is but the legal expression of life itself, enables new problems to be encountered and disposed of from day to day without any rupture in the continuity of legal process and tradition. . . . Thirdly, a system of case law is far less liable to abuse by despotic persons than is a decision under a system of codes or acts, or edicts, alterable at will. . . . Finally, the effect on the office of Judge in a system dependent upon code or edict is an unhappy one. It is not mere accident that the Judiciary in the Common Law stands upon so much higher a plane than do the judges in the Continental system. . . .¹

These reasons prevented the Common Law losing the fight with Roman law in this country. It used to be said that the Englishman liked a lord, but it is probably truer to say that he reveres a judge, since, as Sir Henry Slessor puts it, our law is "judge-made law", in which legal precedent is of paramount importance.

It would be wrong to give the impression that English law was entirely free from any external influences. Indeed, it shows the influence of both Canon and Roman law, and we could hardly expect anything else if we consider the part played by clerics in the early days of Common law. The great names of those early days are those of clerics well-versed in both Roman and Canon law: Bracton himself, judge in the *Curia Regis* in the middle of the thirteenth century, is an eminent example of this. Despite these influences, however, the essential spirit and framework of English law has remained the same and our debt of gratitude to those early pioneers of our legal and Catholic past is great indeed.

If such, then, is our legal background as Englishmen, what must we say of our continental brethren? What is their civil legal background? It is very different from ours, as the above quotation from Sir Henry Slessor shows. The continental cleric (I mean the pre-Hitler and pre-Iron-Curtain cleric) approaches his Canon law with his mind already sympathetically attuned to the idea of a Code of Church law, for he is accustomed to a strict system of civil law embodied in one official document. He reveres the jurist rather than the judge: authoritative interpretation rather than legal precedent. The reason is that Con-

¹ *The Law*, by Sir Henry Slessor, pp. 16 ff.

tinental law takes its inspiration from the Roman law. Traditionally this has been so for centuries, and the same tradition, owing to continental influence, is followed in French Canada, South Africa, and, on our own doorstep, in Scotland. This law was what the hard-headed Romans left as their undying monument, and for over twenty centuries it has proved an eminently useful monument, too. A system of such antiquity and utility deserves something of our attention on its own merits alone; but when we reflect on the influence it has had on Canon law, such attention cannot but be of help to us as priests. We need some idea of the history of Roman law to give us that legal background which we do not already possess on first opening the pages of the Code.

The Romans, like other primitive peoples, had in their early years certain customs and observances which were regarded as sacred. From the city's early days, too, dates that division of the population known to all schoolboys studying the classics, namely, the Patricians and Plebeians. Only the Patricians were recognized as citizens: the rest were legal "nobodies": they were not *personae iuridicae*. We all retain some vagrant memories of the chapter in our Roman History books entitled "The Struggle of the Orders": a struggle which resulted in the final attainment by the Plebeians of full political and legal equality. Before this equality was attained the administration of all departments of civic life, including the law, had been the preserve of the Patricians. The College of Pontiffs, under the Pontifex Maximus, had been the custodian and sole interpreter of the laws: and to be a Pontiff, one had to be a Patrician. One of the things that the Plebeians demanded, and achieved, was that the laws should cease to be something quasi-secret, and that they should be written down and displayed in the Forum for all to see, Plebeian and Patrician alike. The result was the famous Twelve Tables, which, no matter what be the truth of Livy's account of their date of origin, were certainly regarded by later ages as the *fons omnis publici et privati iuris*. They formed the first document of Roman law, and much of its subsequent development was consciously and explicitly based on that document by means of interpretation and commentary.

The appearance of these Tables did not, of course, solve all

legal problems; far from it. The law was known by all, but its interpretation was not. The College of Pontiffs carried on the work of interpretation, and in doing so developed the law: even by means of fictions, when necessary. They made the first tentative steps along the high-road of the development of Rome's greatest bequest to posterity.

Rome began to grow in importance, and the growth was fast and vigorous in the third and fourth centuries B.C. She was no longer the little country-town of early years, but with her expansion in Italy and her success in the Punic Wars she was becoming, in effect, the metropolis of an Empire. Aliens jostled citizens more and more frequently in the streets of Rome; business relations with these newcomers grew in volume, and, naturally, problems arising out of these new relations grew also. Now there had been a Magistrate appointed to deal with the legal business of citizens. This Magistrate was the Praetor Urbanus, *qui ius in urbe dicit*. He was not a judge, but he controlled the administration of the law in the city by deciding whether actions lay or not. His was an equitable jurisdiction, and at the beginning of his year of office, he issued an "Edictum" setting out his general policy for that year; and during the course of the year he could, if necessary, issue an "Edictum Repentinum" to cover one particular case. Praetorian Edicts indicated the circumstances in which relief would be given from the harshness of the strictly interpreted *ius civile*.

In order, however, to meet the urgent problem of the growing number of non-Romans in the city, it was decided to set up another Magistrate. This was the Praetor Peregrinus. He, too, issued Edicts, but his *modus agendi* was somewhat different from that of his urban counterpart. The latter had to deal with matters relating to the *ius civile*, since he was dealing with Roman citizens; but the Praetor Peregrinus could not apply the same to the people under his jurisdiction, since they were not Roman citizens. Yet some law had to be applied. At first sight the examination of the legal institutions and characteristics of the many foreigners involved would have seemed to lead nowhere but to complete chaos: each tribe had its own laws: each tribe was different from its neighbours. Still, in such great diversity there was some unanimity, some common denominator to

be found in them all. This common denominator consisted of "rules prescribed by natural reason for all men . . . observed by all peoples alike".¹ This is what the Romans called the *Ius Gentium*.² On this foundation the Praetor Peregrinus built a useful corpus of law, which was not so hedged about with forms and disabilities as the *ius civile*; Roman citizens saw aliens taking advantage of a more equitable system than their own. The inevitable happened: the Praetor Urbanus was, to some extent, influenced in his work by the Praetor Peregrinus. The body of law resulting from the work of these Magistrates became known as the *Ius honorarium*, and formed an important element in the evolution of Roman law. Praetorian Edicts continued to be issued yearly until their final crystallization by order of the Emperor Hadrian in the "Edictum Perpetuum" of A.D. 129.

Although the Praetorian equitable jurisdiction came to an end, the development of the law went on unchecked. The jurists had appeared. Originally private individuals giving advice and instruction to clients on points of litigation, the jurists, or "iurisprudentes", benefited by the increase in legal business. Their influence grew and in time they were widely consulted, even by Praetors and Arbitrators, so that by the end of the Republic, the authority of the jurists and their *responsa* was firmly, if as yet unofficially, established. Official recognition came with Augustus. That Emperor, anxious to have the backing of jurists, as a matter of practical politics, resorted to the age-old game of the carrot and the donkey. The carrot was the *ius respondendi*. This meant that the replies of those jurists who "toed the party-line" should have the force of Imperial acts and should be binding for the future. Eventually the *ius respondendi* was extended to all the jurists and, furthermore, the authority attached to their strict *responsa* was given to all their writings. The work of the jurists was of the greatest importance in the development of law, and the names of Gaius, Papinian, Julius Paulus, Ulpian, and

¹ Justinian's *Institutes*, Bk. I, Title II, n. i.

² This is also what St Thomas Aquinas calls the *ius gentium*, following both Aristotle and the Roman jurists. The later Scholastics, however, regarded the *ius gentium* as those laws "quae sunt adeo propinquae legi naturali et commodae naturae rationali ut omnes fere gentes in iis convenerint, quamvis eadem non sola ratione naturali, sed praecipue consuetudine gentium introductae sint"; cf. Cathrein, *Philosophia Moralís*, nn. 306-10.

Modestinus—all of the classical period of Roman Law, viz. A.D. second to third centuries—were names to conjure with.

From the end of the A.D. third century the Emperors made the law their own concern. Jurists now became civil servants, forming a "consistory" under the Praetorian Prefect. The influence of the classical jurists, however, was by no means dead; their work inspired many Imperial reforms. The Institutes of Gaius were used as the basis of Justinian's Institutes; and the five jurists named above were regarded as an authoritative panel of legal experts, whose unanimous opinion was binding on all judges.

Thus far we have dealt with the evolution of Roman law from the Twelve Tables up to the age of the jurists, but besides all this the written law of Rome included statutes, plebiscites, senatusconsults, and Imperial constitutions. Ultimately, these last became the only form of statute-law, when the Emperors dropped the pretence of "asking" the Senate to pass their laws for them. They were issued in both parts of the divided Empire, and to avoid the confusion which was bound to follow this division, attempts were made during the fourth and fifth centuries to collect the Imperial constitutions. In 438 the Emperor Theodosian II had a collection made by jurists; it was the only authentic collection of Imperial legislation from Constantine to Theodosian himself.

The fifth century saw the collapse of the Western Empire, and the Eastern Empire was left with the full responsibility for the care of Roman law. Justinian became Emperor in 527 and set about the task of producing a systematic arrangement of the law. In 529 appeared his Codex, containing the *leges* or statute-laws; it was revised and reappeared in 534 as the *Codex Repetitae Praellectionis*. The next year saw his Digest published, containing the systematic arrangement of the *ius Romanum* found especially in the works of the jurists. Along with the Digest, Justinian published his text-book for the use of "the youth desirous of studying the law",¹ namely the Institutes. These three books, along with the Novellae, which were decisions of the Emperor on doubts arising out of the Codex and the Digest, form what is known as the *Corpus Iuris Civilis*. This work of Justinian was

¹ Justinian, op. cit. : Prooemium.

destined to play a most important part in the legal history of Europe. The text of the Digest was lost for centuries, and was only known in fragments until it was rediscovered in the Middle Ages. From that time dates the renaissance of Roman law studies, first in Italy and then all over the continent. The influence of this renaissance is evident in Canon law: Gratian himself was professor of both Canon and Roman law at the University of Bologna.

Of course, the influence of Roman law on Canon law did not begin with Gratian. It had been there a long time: in fact, it had been there since the time of the Emperor Constantine, whose conversion removed the Church from the legal underworld. Naturally enough, the Church required some little time to adjust herself to her new-found freedom; her attitude to the Roman law was cautious. After all, there is bound to be a certain embarrassment when a recently released prisoner first meets socially the judge who sent him to prison! Consequently, the Church did little else at first than acknowledge Roman law as the system *de facto* applying to so many of her subjects in the temporal sphere. At the same time, the Emperor granted privileges to the Church and included them in the law.

Gradually, however, the Church's attitude changed; she began to invoke Roman law in support of her own, and by the seventh century we find Pope Gregory the Great making frequent quotations from the law of Justinian. Furthermore, Roman law was used analogically in the framing of Canon law on certain points. Thus, the law on colonists was taken as the analogy for the Canon law on the appointment of clerics to particular churches; the law on the protection of manumitted slaves for that on the care of "miserabiles" such as widows and orphans.

With the ninth century, the Church made bolder use of Roman law. She took over various items of that law and inserted them into her own; she started to "canonize" Roman law. About 890, a collection of canon law was made in north Italy. This collection, called *Anselmo dedicata*, contained 238 capitula from Roman law. Earlier in the same century Pope Nicholas I (858-867) writes to Charles the Bald concerning Lothair's matri-

monial cause and asks that a suitable place be chosen for the hearing of it" . . . ubi nulla sit vis multitudinis formidanda et non sit difficile testes producere vel ceteras personas quae tam a sanctis canonibus quam a venerandis romanis legibus in huiusmodi controversiis requiruntur."¹ The cautious attitude of early days has changed to one of veneration now. But this veneration for the Roman law must be understood correctly, for we must remember that fundamentally and despite its excellence as a system, the law of Rome was a pagan thing. Even though Justinian, a Christian Emperor, could preface his Institutes with the invocation "In nomine Domini Nostri Jesu Christi", he could also say in Title II of the first book ". . . whatever the Emperor determines has the force of a statute . . . whatever the Emperor settles by rescript . . . is clearly a statute".² Is not this the principle "Quod principi placuit legis habet vigorem"? How different from the dictum of Henry of Bracton, the great Common lawyer, "Quod rex non debet esse sub homine, sed sub Deo et lege".³ There you have the essential difference between two laws expressed to a nicety: one pagan in origin, the other Christian. Though the Church exerted much influence on Roman law, a certain hard core of paganism remained, and that is why the receptive policy of the Church was bound to be a strictly qualified one. Still, this cautious policy was followed to such good effect that by the middle of the tenth century Atto of Vercellae could say ". . . etiam nobis sacerdotibus (ius romanum) in multis convenit observari".⁴

One of the results of the Barbarian Invasions was that Roman law ceased to be the one system applying to the West. The invaders brought their own tribal laws with them, and these laws existed side by side with Roman law. Pure Roman law disappeared; legal confusion spread over the continent. This situation is strikingly described by Agobard, Bishop of Lyons (ninth century). In a letter to Louis the Pious, he begins by reminding that prince of the unity of all Christians in the Lord, and continues ". . . cupio per pietatem vestram nosse, si non huic tantae divinae operationis unitati aliquid obsistat tanta

¹ *Mansi*, XV, col. 320.

² Justinian, op. cit., loc. cit., n. 6.

³ Quoted in *The Common Law of England*, by a King's Counsel, p. 16, note 6.

⁴ Quoted by Van Hove in the *Prolegomena to the Commentarium Lovaniense*, ed. altera (1945), n. 219.

diversitas legum, quanta non solum in singulis regionibus aut civitatibus, sed etiam in multis domibus habetur. Nam plerumque contingit ut simul eant aut sedeant quinque homines et nullus eorum communem legem cum altero habeat."¹ He concludes his letter with an appeal that this state of affairs ". . . non solum ut inutilis sed etiam ut noxia, de medio auferretur". The enthusiasm which followed the rediscovery of Justinian's work in the eleventh century, and the consequent renaissance of Roman law, are much easier to understand in the light of such words as these. The Church, of course, had kept firm hold of the Roman law, and much of what was received into the law of the West came through the Canon law.

The pioneers of the renaissance of Roman law studies were the Italian universities, and especially that of Bologna. From Italy the revival spread; Canon and Roman law were taught by the same professors; both were studied together, and degrees in *utroque iure* became the normal thing. When alumni of these schools became bishops—as many of them did—they also spread the influence of Roman law in their diocesan legislation. The great name of the period is that of Gratian, whose famous *Decretum*, or *Concordantia discordantium canonum*, exercised an enormous influence on the law of the Church. He was perfectly aware of the Church's debt to Roman law; he was careful, too, to assess correctly the relative importance of both systems. "Ecce," he says, "quod constitutiones Principum ecclesiasticis legibus postponendae sunt. Ubi autem evangelicis atque canonicis decretis non obviaverint, omni reverentia dignae habeantur. . . . Si in adiutorium vestrum terreni imperii leges assumendas putatis, non reprehendimus. Fecit hoc et Paulus cum adversus iniuriosos civem romanum se esse testatus est."² Gratian used his *Decretum* as his teaching manual, and those who came after him, both at Bologna and elsewhere, did likewise, making glosses and commentaries on his work. By writing this manual, Gratian became "pater scientiae canonicae",³ and although the Decree was never authentically approved as a Code of Canon law, many texts from it obtained the force of universal law, owing not only to its use in the schools, but also to the wide use made

¹ Migne, *P.L.*, CIV, coll. 115-16.

² Dictum Gratiani, *D.X.*, post c. 6; c. 7.

³ Van Hove, *op. cit.*, n. 349.

of it by Popes, its reception by ecclesiastical tribunals, and the approbation which custom conferred upon it.

The *Decretum Gratiani* was enshrined in the *Corpus Iuris Canonici*, which remained one of the chief sources of Canon law until the promulgation of the New Code. Of course, the influence of Roman law is evident elsewhere in the *Corpus*, and one thinks immediately of the *Regulae Iuris in Sexto* in this connexion.¹ Furthermore, the *ius suppletorium* of the Church until the Code was the Roman law. Small wonder, then, that much of the Code law uses forms and terms taken from that law, for, as Canon 6 says: "Codex vigentem huc usque disciplinam plerumque retinet." Small wonder, too, that, though Roman law is no longer accepted as the *ius suppletorium*, we rightly consider ourselves as having inherited the best of that system without those disadvantages which have often accompanied the great receptions of Roman law into the civil systems of the continent. This, in addition to our own legal history, should convince us that we in England enjoy the best of two legal worlds. Such good fortune, surely, deserves fitting appreciation; and we cannot begin to appreciate before we have the proper legal background. Where Canon law is concerned, the desirability of some notions of the history of Roman law and its effect on Canon law should, it is hoped, be apparent. Such notions, indeed, should not be regarded as belonging to the arcana of the specialist, but as a part of every priest's vocational equipment.

J. COOKE

EASTERN CHURCH MARRIAGE CAUSES

THE first instalment of the proposed codification of Eastern canon law was issued by *Motu Proprio*, 22 February, 1949,² containing the canons on marriage; the commentary printed in this journal concluded by expressing the desire that the canons codifying the law of the Eastern Churches on the conduct of

¹ These "regulae iuris" are to be found as an appendix to the Decretals of Boniface VIII.

² THE CLERGY REVIEW, 1949, XXXI, pp. 331, 347; *Periodica*, 1949, p. 94; *The Jurist*, 1949, p. 316.

marriage causes would also be published. This wish has been satisfied much sooner than expected by the *Motu Proprio* "Sollicitudinem Nostram", 6 January, 1950 (*infra* p. 275), accompanying 576 canons *De Iudiciis pro Ecclesia Orientali*, a publication which takes up 120 pages of the *Acta Apostolicae Sedis*. Offering a brief description of the document in this note we shall try to indicate its value for a fuller understanding of our own Code on the subject, restricting our remarks chiefly to marriage trials, which are the only ones of which priests have much experience in this country. The word "canon" will be used for our own Code and "number" contracted to "n" for references to the Eastern one.

I

With one or two notable exceptions the order and arrangement is that of the Latin Code, *Pars Prima: De Iudiciis*, canons 1552-1998, which is divided into three: I, *De Iudiciis in genere*; II, *De Iudicio Contentioso*, which contains the section on marriage causes, nn. 453-500, corresponding to canons 1960-1992; III, *De Iudicio Criminali*. Our canons 199-209 on ordinary and delegated jurisdiction are inserted early in the document, nn. 5-13, and there is a new section *De Iudicio contentioso coram unico iudice*, nn. 453-467, which has no exact counterpart in our canons. In other parts of the document more numbers than we have canons are devoted to some subjects, as for example to criminal trials in nn. 529-575, but the striking thing, considering the variety of procedure in the different Eastern Churches, is the similarity with Western procedure now attained, and apparently welcomed by the Eastern hierarchs. Nor is this substantial uniformity achieved at the cost of the surrender of judicial rights enjoyed for centuries by Eastern patriarchs: numbers of causes which with us are reserved to the Holy See appear in this document as belonging of right to the patriarchs in synod.

II

The chief point of interest for us is to note the phrasing of certain canons which, since the publication of the Code, have

been subjected to somewhat rough official handling, and to observe the form in which they emerge in this document. The best example to take is canon 1971, determining the persons who are barred from accusing a marriage of nullity, which has been interpreted by an exceptionally large number of decisions given by the *Code Commission* or by the *Congregation of the Sacraments*,¹ and which unfortunately is still far from being free of all obscurity.

CANON 1971

§1. Habiles ad accusandum sunt:

1. Coniuges, in omnibus causis separationis et nullitatis, nisi ipsi fuerint impedimenti causa;

2. Promotor iustitiae in impedimentis natura sua publicis.

§2. Reliqui omnes, etsi consanguinei, non habent ius matrimonia accusandi, sed tantummodo nullitatem matrimonii Ordinario vel promotori iustitiae denuntiandi.

N. 478

§1. Habiles ad accusandum sunt:

1. Coniuges, in omnibus causis separationis et nullitatis, nisi ipsi fuerint impedimenti vel, etiam alia ratione, nullitatis matrimonii causa directa et dolosa;

2. Promotor iustitiae in impedimentis natura sua publicis.

§2. Reliqui omnes, etsi consanguinei, non habent ius matrimonia accusandi, sed tantummodo nullitatem matrimonii Hierarchae loci vel promotori iustitiae denuntiandi. Eodem iure gaudent coniuges ad accusandum matrimonium inhabiles.

§3. In causis de nullitate matrimonii, ut acatholici, sive baptizati sive non baptizati, partes actoris agere queant, indigent facultate impetranda a S. Congregatione S. Officii.

The growth of n. 478 from canon 1971, under the influence of official decisions, is seen in the following points: (1) the *Code Commission*, 12 March, 1929, decided that the word "impedimenti" in §1, 1, covered not only impediments properly so

¹ Cf. THE CLERGY REVIEW, 1946, XXVI, p. 661.

called (canons 1067-1080; e.g. consanguinity) but also impediments improperly so called (canons 1081-1103; e.g. fear). The wording of n. 478 shows that the defects of consent in canons 1081-1103 should not be called impediments at all in any sense of the word.

(2) The right of the parties to denounce their marriage to the Ordinary or to the Promotor, affirmed several times by the *Code Commission*, is expressed in the final sentence of n. 478, §2. The Instruction *Provida* issued for diocesan tribunals, 15 August, 1936, limits in various ways throughout articles 38 and 39 this right of the parties to denounce their own marriage, the nullity of which was caused by themselves. On the other hand, the *Code Commission* has been inclined towards defending the legal right of the parties, and it is interesting to note that the extremely fussy content of *Provida*, articles 38 and 39, has not been introduced into n. 478.

(3) That a party to a marriage is not barred from accusing it of nullity unless the cause of nullity is "directa et dolosa", as in n. 478, §1, 1, was decided by the *Code Commission*, 27 July, 1942, which to a large extent negatives the bar. A Rotal decision, for example, reviewing the whole history of canon 1971 when deciding an incidental question, held that the bar was a penalty and presupposed a *delictum* as defined in canon 2195, §1.¹

(4) N. 478, §3, is the equivalent of *Provida*, art. 35, §3, based on a decision of the Holy Office, 27 January, 1928.

(5) Since many important official decisions are introduced into this Eastern recension of canon 1971, it is significant that no mention is made of the *Code Commission* reply of 4 January, 1946, which gave a negative answer to the question: "An inhabilitas coniugis ad accusandum matrimonium, a canone 1971 §1.1, statuta, secumferat incapacitatem standi in iudicio, ita ut sententia vitio insanabilis nullitatis laboret iuxta canonem 1892.2." Canon 1892 is repeated *verbatim* in n. 418. This reply contradicted the view of many canonists who held, almost as a matter of course, that a person who was "inhabilis" was necessarily one "qui non habet personam standi in iudicio", and the difficulty about its interpretation still remains.

Other illustrations of the official interpretations of our canons

¹ *Ephem. Iuris Canon.*, 1946, p. 166: *coram* Canestri, 20 May, 1944.

may be seen in n. 430 (canon 1903) which places separation causes amongst those which never become *res iudicata*, as the *Code Commission* decided, 8 April, 1941;¹ or n. 498 (canon 1990) which introduces the word "sententia" in the last line, since it was decided by the *Code Commission*, 6 December, 1943, that the summary process of canon 1990 was judicial not administrative.²

III

In addition, without introducing any changes, the terminology employed in the Eastern Code is often clearer than that in the corresponding canon, as in nn. 52 seq. (canons 1580 seq.) where "relator" is omitted from the title of the section, since for all practical purposes it means the same thing as "ponens"; it is similarly omitted from n. 50 (canon 1584), the precise office of "ponens" being clearly described: "§1 Ponens processum dirigit et decernit quae pro iustitiae administratione in causa quae agitur necessaria sunt. §2. Ponens in conventu iudicum de causa refert et sententiam in scriptis redigit."

A useful clarification occurs in n. 137 (canon 1622) which determines the method of touching the breast when a priest takes an oath; the canon seems to make this obligatory, whereas in n. 137 it is not: "Quotiescunque iusiurandum praestatur sive a iudicibus aut tribunalis administris, sive a partibus, testibus, peritis, semper emitti debet praemissa divini Nominis invocatione et tactis Cruce D.N.I. Ch. vel sancto Evangeliorum libro, aut, si ferat usus, tacto a sacerdotibus pectore."³

A curious liturgical detail is observable where the term "Sacra Synaxis" of canon 1956 is rendered in n. 537 as "Sacra Communio". It might appear that "Synaxis" is an eminently suitable word for an Eastern Code, and the reason why it is not used is, no doubt, that its proper meaning in Eastern liturgical use is to denote the sacrifice of the Mass, whereas papal documents in recent years have used it to denote Holy Communion.

These few indications will suffice to show the value of the

¹ THE CLERGY REVIEW, 1941, XXI, p. 302; compare also n. 497 with canon 1989.

² Op. cit. 1944, XXIV, p. 567.

³ Cf. THE CLERGY REVIEW, 1947, XXVII, p. 417.

new codification, not only for the Eastern Churches but in the West as well. Canonists employed on our diocesan marriage tribunals will find the document a useful one to have, since by consulting the numbers equivalent to our canons doubts may often be resolved, or fresh light thrown upon obscure points of procedure.

QUESTIONS AND ANSWERS

SUICIDE: SECRET SERVICE AGENTS

Is it possible to justify on Catholic ethical principles the practice during war of secret service agents who, lest torture should make them reveal important secrets, swallowed poison when captured? (G.)

REPLY

II Machabees xiv, 41: Now as the multitude sought to rush into his house, and to break open the door, and to set fire to it, when he was ready to be taken, he (Razias) struck himself with his sword: choosing to die nobly rather than to fall into the hands of the wicked, and to suffer abuses unbecoming his noble birth.

Summa Theol., II-II, 64, 5, ad 5: Sed quod aliquis sibi ipsi inferat mortem ut vitet mala poenalia, habet quidem quamdam speciem fortitudinis, propter quod quidam seipsos interfecerunt aestimantes se fortiter agere, de quorum numero Razias fuit: non tamen est vera fortitudo, sed magis quaedam mollities animi non valentis mala poenalia sustinere, ut patet. . . .

The question is one in which the common opinion is almost insuperably at variance with the logical application of Catholic ethical principles, as the present writer found more than once during the war when answering queries on the subject at meetings of Catholic members of the services: one sensed that their acceptance of the answer was purely notional, like the accep-

tance of some theorem of Euclid which apparently has no practical application. Moreover it is always unattractive for the clergy, who may not take part in wars, to tell fighting men what their moral obligations are.

i. The principle as usually formulated affirms that it is intrinsically and of its nature a grave sin to kill one's self directly on one's own authority, the word "directly" being introduced to allow for cases when death occurs indirectly as the second effect of a lawful action, which is clearly not applicable to this case; and the term "on one's own authority" included in order to cover a few instances of suicide committed by divine inspiration, as that of St Apollonia, commemorated in the Office of 9 February, which incidentally is the day on which this note is being written. An alleged extraordinary divine inspiration has all the qualities of a *Deus ex machina*, except that it can only be invoked when there are reasons for supposing that it happened, as the fact that St Apollonia is canonized, or that Holy Scripture records such events with apparent approval. Though it is clearly open to God to delegate His prerogative to someone else, it has never been maintained that secret service agents kill themselves by an immediate divine inspiration, but only that they do so on the authority of the State; and if it could be proved that the State possesses the right not only of putting malefactors to death for the common good of society, but also of killing innocent persons, the elimination of secret service agents could quite reasonably be added to mercy killing, sterilization, therapeutic abortion, and the mass murder of hostages, Jews, or any other classes who happen to be unwanted or inconvenient. There is no need for us to prove that the State lacks these rights, and accordingly lacks the right to authorize suicide.

ii. If it cannot be justified in principle, still less can it be done by the casuistical method of arguing from one case to another. Thus, it may be held as probably lawful that the State may order a malefactor justly condemned to death to kill himself, or that anyone may expose himself to certain death to avoid a more painful one, or that as a protest against injustice a prisoner may go on hunger-strike. In all these instances there is no exact parity with the one we are considering, and even the most enthusiastic defender of the hunger-strike will not admit

that the prisoner may poison or shoot himself as a protest against injustice. For the most part they are applications of the double effect principle, which supposes that the immediate action is good or indifferent and that the second or evil effect is not directly intended. In fact, the only justifiable course for the secret service agent when threatened with capture is to resist his opponents, even though there is not the slightest prospect of escaping death at their hands; or to attempt escape by any action which is not certainly and of its nature direct self-destruction.

iii. Though unable to justify this type of suicide, either in principle or by casuistical methods of argument, we think that persons so placed are deserving of an intelligent sympathy, which may take the form, firstly, of deciding that the circumstances are usually such as to excuse from grave sin, and therefore from the ecclesiastical penalties attached to suicide by canon 1240, §1, 3; one could even say, in many instances, that there is no formal sin at all owing to an invincibly erroneous conscience. It will follow, secondly, that it is best for a priest to leave these people in good faith if it is possible to do so without causing scandal; there is no need, especially during a war, to preach the doctrine of (i) and (ii) in season and out of season, but if one is pressed for a decision the answer must be that the action is direct suicide and forbidden by the natural law.

iv. Our correspondent asks for the opinions of theologians on the subject, and whether there exists at least an extrinsic probability justifying this type of suicide. Perhaps the commendable reticence mentioned in the previous paragraph accounts for the lack of modern theological opinion in the journals. We know of only one modern writer who deals with the point, in *l'Ami du Clergé*, 1947, p. 189, quoted with approval in *Theological Studies*, 1948, p. 89, whose conclusions are as we have stated above. The older theologians unburden themselves on II Machabees xiv, 41, and an excellent summary of their approaches is in *Collationes Brugenses*, 1900, p. 403: they either conclude that Razias committed grave sin, or that he acted under God's inspiration, or that he had an invincibly erroneous conscience and committed only material sin. Anyone bent on finding some plausible argument or authority justifying the action might con-

sult the seventeenth-century casuists: Sylvius is quoted as justifying Razias in the recent Leonine edition of the *Summa Theologica*, but no reference is given. Those we have consulted, including the English Benedictine Gregory Sayers, O.S.B., in *Clavis Regia*, VII, ix, 10, give the doctrine as above in (i) and (ii). A recent article in *Dictionnaire de Théologie Catholique* XIV, col. 2739, treats many new aspects of the subject of suicide not found in the manuals, but does not include this case except by implication in giving the usual solution about Razias. We shall be glad to know of any serious contribution to the question by modern writers, but we think, until better informed, that no justification of the practice is logically possible, except on premisses about the State's powers which must be rejected. Thus De Lugo, Disp. x, 1, n. 3, Vivés VI, p. 38, rejects the view which regards suicide as essentially a crime against the State, because this would mean that the State could authorize suicide.

FACULTIES SUSPENDED DURING THE HOLY YEAR

It seems that, as regards the ordinary confessor's *pagella* of faculties in this country, the faculties suspended in *Fore confidimus* are restored in the same document on other titles. Is this conclusion, which appears somewhat unreasonable, correct? (T.)

REPLY

Fore Confidimus, 10 July, 1949; THE CLERGY REVIEW, 1949, XXXII, p. 340:

Haec tamen per exceptionem decernimus:

I. Ratae sint facultates omnes per Codicem iuris canonici quovis modo concessae. . . .

III. Quas denique facultates S. Paenitentiaria Nostra impertire solet Ordinariis aut confessariis pro foro interno, easdem ne extra Urbem quidem suspendimus, sed ita ut erga eos dumtaxat paenitentes exercentur, qui, quo tempore confessionem peragunt, iudicio Ordinarii aut confessarii nequeant sine gravi incommodo Urbem adire. . . .

The contention is true in very large measure. That it is not wholly unreasonable will be perceived if it is remembered that certain confessors obtain by indult from the Holy See powers which are not included in the diocesan *pagella* issued by the Ordinary to the generality of confessors both regular and secular; there is no uniform *pagella* and it varies in different dioceses. Also, in more recent times, and notably under the Code discipline, all confessors have in the common law much wider powers than in the past, whereas the Jubilee document follows ancient precedent dating from times when these powers were not so wide in the common law. In the *pagella* issued by local Ordinaries to all priests in their jurisdiction the sections relevant to the above question deal with censures, irregularities and vows.

i. Faculties may be given by the Ordinary over certain censures reserved in the Code, either to the Ordinary or to the Apostolic See. These all remain unaffected by the Jubilee suspension, from n. I of the document and canon 2237. Similarly those faculties remain, of which the *pagella* may make no mention, when jurisdiction is granted in the Code to all confessors, for example from canon 2254. Confessors who are doubtful of their powers can always use this canon. Faculties to dispense certain irregularities, granted in accordance with canon 990, likewise remain from n. I of the document. Faculties to dispense and commute vows, delegated by the Ordinary from canon 1313, §1, also remain.

ii. The document in n. III refers, firstly, to Ordinaries. From the *Adnotanda* in the section of episcopal quinquennial faculties,¹ issued by the Sacred Penitentiary in 1947 to the Irish Bishops, vicars forane may be subdelegated habitually, and other confessors in each particular case. The terms of our question relate to these vicars forane who may have been subdelegated by Ordinaries enjoying a similar faculty from the Sacred Penitentiary. The faculties may be used during the Holy Year only in favour of those penitents who cannot, without grave inconvenience, make the Roman pilgrimage.

It refers, secondly, to confessors who may have, by indult, similar faculties from the Sacred Penitentiary, but to the best

¹ Cf. *Irish Ecclesiastical Record*, 1948, LXXI, p. 374.

of our knowledge this is unusual except in the case of certain regulars. They may use the faculties during the Holy Year with the same limitation mentioned in the previous paragraph.

iii. Commenting upon a similar phrase in *Nullo non tempore*, 30 January, 1933,¹ Vermeersch suggested² that its meaning might be that the suspension refers only to faculties granted by the Sacred Penitentiary "modo extraordinario"; we understand his meaning to be that it does not apply to faculties granted in the usual way in the quinquennial formula. However, the commoner view is that the suspension does apply to this formula; vicars forane or others who enjoy, directly or indirectly, faculties from the Sacred Penitentiary had best discover from their immediate superiors the exact interpretation which should be adopted, for we know of no official solution of this and kindred problems which arise during every Holy Year. But we have canon 209 always with us.

INDULGENCES SUSPENDED DURING THE HOLY YEAR

Does the suspension include not only the indulgences granted to all the faithful, as for example those in *Preces et Pia Opera*, but those granted in *perpetuum* to some particular group, for example a religious Order or a Confraternity? (X.)

REPLY

S. Paenit., 17 September, 1949, ad XV; *A.A.S.*, 1949, XLI, p. 517: Ad indulgentiarum suspensionem quod attinet, eadem Constitutione "Fore Confidimus", cum Apostolica Sedes iam dudum decreverit, nonnullas indulgentias ab usitata per Annum Sanctum suspensione eximi, SS^{ms} D.N. eiusmodi indulta seu privilegia, etsi de iis in memorata Constitutione siletur, non revocat, modo authentice constet ea ipsa fuisse et revera et in perpetuum concessa, ad can. 70, 71 et 60, §2.

An identically worded phrase is found in the *Monita* issued

¹ *THE CLERGY REVIEW*, 1933, V, p. 247.

² *Periodica*, 1933, p. 81.

for the Jubilees of 1925 and 1933, but there is no complete agreement about its exact meaning.

i. Most commentators refer "indulta seu privilegia" to concessions which expressly declare that the indulgences granted remain in force, notwithstanding the Holy Year suspension, and they cite as examples Pius IV, 17 July, 1561 (Holy Land), and Benedict XIV, 27 September, 1748 (Marian congregations).¹

ii. Vermeersch, who seems to have taken the above strict view when commenting on the 1925 Jubilee, gave a much more liberal interpretation in 1933, including in the list of indulgences not suspended: "omnes indulgentiae quae non sunt omnibus fidelibus propositae, sed quibusdam Institutis, Ordinibus vel Congregationibus religiosis, coetibus, vel personis ex indultis perpetuis concessae sunt. . . . Cum eae tantum indulgentiae suspendantur quae omnibus fidelibus lucrandae proponuntur, permanere censemus, pro ipsis fidelibus qui condiciones implent, indulgentias variarum coronarum B.M.V., quia non omnibus sed iis tantum prostant qui vel cooptantur in confraternitatem vel saltem specialiter benedictum rosarium possident. . . ."² This interpretation refers the words "indulta seu privilegia" to the perpetual concession of the indulgence obtained through privilege or indult by some particular group. In the subsequent number of *Periodica* (p. 108) the author withdrew one of his interpretations (about the use of faculties) since the *Sacred Penitentiary* had dissented from his view, but we cannot find that any adverse comment was made on his interpretation of the suspended indulgences either by the *Sacred Penitentiary* or by other writers. His authority in questions of this kind is such that, in our view, his interpretation may be followed in applying the rule during the present Holy Year.

iii. The practical solution of this little problem, pending an official decision, is, firstly, to allow the faithful to follow the opinion of Vermeersch, if they wish to, but to recommend them to have an alternative intention of applying these indulgences to the dead. Secondly, one should not expressly list these indulgences amongst those granted to the living during the Holy

¹ *Collat. Brugen*, 1925, p. 72; *Periodica*, 1924, p. 141; *Apollinaris*, 1933, p. 53; *Gougnard, De Indulgentiis*, p. 91; *Coll. Mechlin.*, 1933, p. 284.

² *Periodica*, 1934, pp. 78 and 97.

Year, for example in parish calendars, magazines and the like; it would be unwise to do this because the commentators, apart from Vermeersch, think that they are suspended unless the grant expressly declares non-suspension during Jubilees; moreover, a publication of this kind is attended by some risk of incurring the excommunication mentioned in the Apostolic Constitution *Fore confidimus*.

CENSURE "AB HOMINE"

An Ordinary publicly declared that A.B., a lapsed Catholic who is a notorious communist, has incurred the excommunication attached. Does this declaration make the censure "ab homine", i.e. cause it to be reserved to that Ordinary?

REPLY

Canon 2217, §1, 3: Poena dicitur *a iure*, si poena determinata in ipsa lege statuatur, sive latae sententiae sit sive ferendae; *ab homine* si feratur per modum praecepti peculiaris vel per sententiam iudiciale[m] condemnatoriam, etsi in iure statuta; quare poena ferendae sententiae, legi addita, ante sententiam condemnatoriam est *a iure tantum*, postea *a iure* simul et *ab homine*, sed consideratur tanquam *ab homine*.

Canon 2245, §2: Censura *ab homine* est reservata ei qui censuram inflixit aut sententiam tulit. . . .

§4: Censura latae sententiae non est reservata, nisi in lege vel praecepto id expresse dicatur; et in dubio sive iuris sive facti reservatio non urget.

i. As Dr McReavy clearly demonstrated,¹ the decree of the Holy Office, 1 July, 1949,² is not a new piece of legislation but merely applies to professed communists (materialistic and anti-Christian) the *l.s.* penalty of excommunication contained in canon 2314. Similarly the conditions for its absolution set out in the Jubilee documents³ are not something new but merely a reminder of the abjuration required by canon 2314, §2, before absolution.

¹ THE CLERGY REVIEW, 1949, XXXII, p. 389.

² *Ibid.*, p. 208.

³ E.g. A.A.S., 1949, XLI, p. 520; THE CLERGY REVIEW, loc. cit. p. 420, ad 5.

ii. The notion of a reservation "ab homine" has caused many difficulties, since in the first place the Code legislation is somewhat different to what preceded it, and this has not been perceived by some commentators; and in the second place the Code terminology itself is not transparently clear. The declaration that a named person has incurred a censure *l.s.* may be given judicially in the course of an ecclesiastical trial, or administratively without the formalities of a trial, but in neither case does the censure thereby become "ab homine" and its absolution reserved to the authority making the declaration. This happens only when a condemnatory sentence of censure *f.s.* is inflicted judicially (therefore *sententiam* in canon 2245, §2, means *sententiam iudicalem condemnatoriam* as in canon 2217, §1, 3) or administratively without the formalities of a trial (therefore *feratur* of canon 2217, §1, 3 is the equivalent of *censuram inflixit* of canon 2245, §2). Stricter interpretations are found in certain writers, but we think this the clearest and the simplest to adopt, and the *dubium iuris* is covered by the concluding words of canon 2245, §4¹. Though it is not within the terms of the above question, note that a censure *l.s.* added to enforce a particular precept is equally not "ab homine" according to Roberti and Michiels, who are now generally followed.²

iii. The effect of the Ordinary's declaration in this case is not to make the censure "ab homine" and therefore reserved to that Ordinary, but to make it *publici iuris*. It may be absolved *servatis servandis* by any Ordinary in the external forum with the procedure of canon 2314, §2; or it may be absolved by a confessor delegated by the Holy See with powers to absolve even public cases reserved *speciali modo*; or it may be absolved by any confessor with the procedure of canon 2254. If absolved not by a local Ordinary in the external forum but by a confessor, the penitent must undertake to submit himself to the external authority which will deal with the case as provided for in canon 2251, and until the requirements of the external forum have been satisfied he must, for the purpose of avoiding scandal, act externally as though still under the censure.

E. J. M.

¹ Cf. Heylen, *De Censuris*, pp. 17-19; Brys, *Compendium*, II, §968.

² Cf. *l'Ami du Clergé*, 1947, p. 727.

ROMAN DOCUMENTS
THE OECUMENICAL MOVEMENT

SUPREMA SACRA CONGREGATIO S. OFFICII

INSTRUCTIO AD LOCORUM ORDINARIOS: "DE MOTIONE OECUMENICA"
(*A.A.S.*, 1950, XLII, pp. 142-7).

Ecclesia Catholica, etsi congressibus ceterisque conventibus "oecumenicis" non intervenit, nunquam tamen destitit, ut ex pluribus documentis Pontificiis colligitur, neque unquam in posterum desistet intensissimis studiis prosequi assiduisque ad Deum precibus fovere omnes conatus ad illud obtinendum, quod tantopere Christo Domino cordi est, videlicet ut omnes, qui credunt in Ipsum, "sint consummati in unum".¹

Etenim affectu plane materno omnes complectitur, qui ad ipsam tamquam ad unicam veram Christi Ecclesiam revertuntur; unde nequeunt satis probari et promoveri cuncta illa consilia et incepta, quae, consentiente Ecclesiastica Auctoritate, sive ad conversuros rite in fide instruendos, sive ad conversos in ea altius perficiendos, suscepta sunt atque peraguntur.

Iam vero in pluribus Orbis partibus, quum ex variis externis eventibus et animorum mutationibus, tum maxime ex communibus fidelium orationibus, afflante quidem Spiritus Sancti gratia, in multorum animis ab Ecclesia Catholica dissidentium desiderium in dies excrevit ut ad unitatem omnium redeatur, qui in Christum Dominum credunt. Quod profecto filiis Ecclesiae verae est causa sanctae in Domino laetitiae simulque invitamentum ad praestandum omnibus sincere veritatem quaerentibus auxilium, ipsis lucem et fortitudinem effusa prece a Deo sollicitando.

Conatus autem quidam a diversis sive personis sive etiam coetibus ad reconciliandos cum Ecclesia Catholica dissidentes christianos hucusque suscepti, quamvis optimis inspirentur intentionibus, non semper rectis innituntur principiis, et si quando innitantur, tamen peculiaribus non carent periculis, quemadmodum etiam experientia iam est compertum. Quare Supremae huic S. Congregationi, cui incumbit cura depositum fidei conservandi integrum ac tuendi, opportunum visum est in memoriam revocare et praecipere ea, quae sequuntur:

I. Quum praefata "reunio" ad Ecclesiae munus et officium potissimum pertineat, speciali cura Episcopos, quos "Spiritus Sanctus posuit regere Ecclesiam Dei",² eidem attendere oportet. Ipsi igitur

¹ Ioan., XVII, 23.

² Act., XX, 28.

non solum diligenter et efficaciter universae huic actioni invigilare debent, verum etiam prudenter eam promovere et dirigere, tum ut adiuventur qui veritatem veramque Ecclesiam exquirunt, tum ut arceantur a fidelibus pericula, quae actionem ipsius "Motionis" facile consequuntur.

Quapropter in primis plane perspecta habere debent quaecumque in suis dioecesibus per illam "Motionem" constituta sunt ac geruntur. Ad hoc Sacerdotes idoneos designabunt, qui, iuxta doctrinam et normas a Sancta Sede praescriptas, v. gr. per Litteras Encyclicas "Satis cognitum",¹ "Mortalium animos"² et "Mystici Corporis Christi",³ omnia ad "Motionem" attinentia sedulo attendant, deque iis, modo ac tempore statuto, sibi referant.

Praecipua autem cura publicationibus, quae hac de re a catholicis quacumque forma eduntur, invigilabunt et sacrorum canonum "De praevia censura librorum eorumque prohibitionem" (can. 1384, seq.) observantiam urgebunt. Quod idem facere non omittent quoad acatholicorum de eadem re publicationes, a catholicis sive edendas, sive legendas, sive vendendas.

Item ea diligenter providebunt, quae acatholicis, catholicam fidem cognoscere cupientibus, inservire possint; personas et Officia designabunt, quae iidem acatholici adire et consulere queant, eoque magis prospicient, ut, qui ad fidem conversi iam fuerint, facile inveniant, qua ratione ipsi accuratius altiusque in fide catholica instruantur, vitamque religiosam actuose ineant, praecipue per opportunos conventus ac coetus, per Exercitia Spiritualia et alia pietatis officia.

II. Quoad modum rationemque hoc in labore procedendi, Episcopi ipsi, quatenam praestanda sint, quatenam vero evitanda, praescribent, eaque ab omnibus observanda curabunt. Pariter invigilabunt, ne, falso praetextu potius esse attendenda ea quibus coniungimur, quam ea quibus seiungimur, periculosus indifferentismus foveatur praesertim penes eos, qui minus rebus theologicis sunt instituti et minus in sua religione exercitati. Cavendum est enim ne spiritu, qui "irenicus" hodie dicitur, doctrina catholica—sive de dogmate sive de veritatibus cum dogmate connexis agatur—studio comparativo et desiderio vano assimilationis cuiusdam progressivae variarum professionum fidei ita conformetur vel quodammodo accommodetur doctrinis dissidentium, ut puritas doctrinae catholicae detrimentum patiatur vel eius sensus genuinus et certus obscuretur.

Arcebunt quoque periculosum illum loquendi modum, quo falsae

¹ *Acta Leonis XIII*, vol. XVI, a. 1897, pag. 157 ss.

² *Acta Ap. Sedis.*, vol. XX, a. 1928, pag. 5 ss.

³ *Acta Ap. Sedis.*, vol. XXXV, a. 1943, pag. 193 ss.

opinionones gignantur ac fallaces spes, quae nunquam impleri possunt; ex. gr. dicendo quae de dissidentium ad Ecclesiam reditu, de Ecclesiae constitutione, de Corpore Christi Mystico in Litteris Encyclicis Romanorum Pontificum traduntur non ita aestimari debere, quippe quia non omnia sint fide tenenda vel, quod peius est, in rebus dogmaticis ne Catholicam quidem Ecclesiam iam habere plenitudinem Christi, sed ab aliis eandem perfici posse. Sedulo praecavebunt et firmiter insistent, ne, in exaranda Reformationis et Reformatorum historia, ita exaggerentur Catholicorum defectus et dissimulentur culpae Reformatorum, vel ita quae potius accidentaliter sunt in lumine collocentur, ut iam id, quod maxime essentiale est, scilicet defectio a fide catholica vix amplius videatur et persentiatur. Denique curabunt, ne nimia ac falsa industria externa vel imprudentia excitatoque procedendi modo rei propositae potius noceatur, quam serviatur.

Tota igitur et integra doctrina catholica est proponenda atque exponenda: minime est silentio praetereundum vel ambiguis verbis obtegendum, quod veritas catholica complectitur de vera iustificationis natura et via, de Ecclesiae constitutione, de primatu iurisdictionis Romani Pontificis, deque unica vera unione per reditum dissidentium ad unam veram Christi Ecclesiam. Hi quidem edoceantur se ad Ecclesiam redeuntis nihil esse perdituros eius boni, quod gratia Dei in ipsis hucusque est natum, sed per reditum id potius completum atque absolutum iri. Attamen non ita de hoc est loquendum, ut ipsi sibi videantur redeuntis aliquid substantiale afferre ad Ecclesiam, quod in Ipsa hactenus defuerit. Haec revera clare et aperte dici oportebit, tum quia veritatem ipsi quaerunt, tum quia extra veritatem unio vera obtineri nunquam poterit.

III. *Quoad mixtos in specie catholicorum cum acatholicis conventus et collationes, quae multis in locis ad fovendam in fide "reunionem" recentioribus temporibus haberi coepta sunt, singulari prorsus Ordinariorum vigilantia et moderamine opus est. Si enim optatam quidem praebent occasionem spargendi inter acatholicos cognitionem catholicae doctrinae adhuc ipsis plerumque non satis cognitae, ex altera tamen parte facile secumferunt haud levia catholicis indifferentissimi pericula. Ubi quaedam boni fructus spes affulgere videatur, Ordinarius rem curabit recte administrandam, designando quam maxime idoneos ad hos conventus sacerdotes, qui catholicam doctrinam apte congruenterque exponant ac defendant. Fideles autem eos conventus ne adeant, nisi obtenta venia peculiari Auctoritatis Ecclesiasticae, quae danda solummodo est iis qui bene instructi et fortes in fide cognoscantur. Ubi vero boni fructus spes non appareat, vel si res aliunde specialia quaedam pericula secumferat, fideles ab*

iisdem conventibus prudenter arceantur, conventus autem ipsi mature dissolvantur vel sensim exstinguantur. Quoniam vero experientia docet, ampliores eiusmodi conventus parum fructus et plus periculi solere afferre, nonnisi post diligentissimum examen permittantur.

Ad colloquia autem inter theologos catholicos et acatholicos mittantur tantummodo sacerdotes, qui, scientia theologica et firma sua adhaesione ad principia et normas hac in re ab Ecclesia statutas, ad illa vere idoneos se probaverint.

IV. Omnes praefatae collationes et conventus, publici et non publici ampliores et minores, ex conducto instituti, ut pars catholica et acatholica discussionis causa de rebus fidei et morum tractet suaeque fidei doctrinam tamquam propriam exponat, par cum pari agens, subsunt Ecclesiae praescriptis, quae *Monito* "Cum comperitum"¹ huius Congregationis die 5 Iunii 1948 dato in memoriam sunt revocata. Conventus mixti itaque non absolute prohibentur; ne tamen habeantur absque praevia competentis Auctoritatis Ecclesiasticae venia. *Monito* autem non subiacent instructiones catecheticae, etiam pluribus simul impertitae, neque conferentiae, in quibus acatholicis conversuris exponitur doctrina catholica: etsi oblata occasione ab acatholicis suae quoque ecclesiae doctrina exponitur eum in finem, ut clare et considerate eis innotescat, in quo ipsa concordet cum doctrina catholica, in quo vero ab ea discrepet.

Neque idem *Monitum* respicit eos conventus catholicorum et acatholicorum mixtos, in quibus non agitur de rebus fidei ac morum, sed deliberatur quanam via collatis viribus principia fundamentalia iuris naturae vel religionis christianae defendantur contra colligatos hodie Dei inimicos, vel agitur de ordine sociali redintegrando aliisve id genus quaestionibus. Quibus etiam in conventibus, ut evidens est, catholicis non licet aliquid probare vel concedere quod cum divina revelatione et Ecclesiae, in re sociali quoque, doctrina non congruat.

Quoad collationes et conventus *locales*, qui iuxta exposita *Monito* tanguntur, Ordinariis locorum datur ad tres annos, a publicatione huius Instructionis computandos, facultas concedendi requisitam praeviam Sanctae Sedis licentiam, iis tamen condicionibus, ut

- 1° omnino evitetur in sacris communicatio;
- 2° ipsae tractationes debito modo inspiciantur et dirigantur;
- 3° in fine cuiusque anni ad hanc Supremam S. Congregationem referatur, in quibusnam locis tales conventus initi fuerint et quanam inde collectae sint experientiae.

Circa vero *colloquia theologorum* supra memorata, eadem facultas ad idem tempus tribuitur Ordinario loci, ubi eiusmodi colloquia

¹ *Acta Ap. Sedis.*, vol. XL, a. 1948, pag. 257.

habentur, vel Ordinario communi consensu ab aliis Ordinariis ad hoc opus dirigendum delegato, sub condicionibus, ut supra, ita tamen, ut item singulis annis ad hanc S. Congregationem referatur de quaestionibus tractatis, quinam interfuerint et quinam exstiterint ex utraque parte relatores.

Quod attinet ad *collationes et conventus interdioecesanos vel nationales sive internationales*, praevia semper, eaque specialis pro singulis casibus, necessaria est ipsius Sanctae Sedis venia, in cuius petitione addendum quoque est, quatenam sint quaestiones et res tractandae et quinam futuri sint relatores. Neque licet, antequam venia haec obtenta sit, inchoare externum eiusmodi conventuum apparatus vel hac in re cum acatholicis eundem inchoantibus collaborare.

V. Quamquam in omnibus hisce conventibus et collationibus quaelibet in sacris communicatio est devitanda, tamen non reprobat communis recitatio Orationis Dominicae vel precationis ab Ecclesia Catholica approbatae, qua iidem conventus aperiantur et concludantur.

VI. Etsi uniuscuiusque Ordinarii ius et officium est huic operi in sua dioecesi attendere, favere et praeesse, tamen plurium Antistitum cooperatio conveniens vel etiam necessaria erit in officiis operibusque ad *universum* hoc opus observandum, explorandum et moderandum instituendis. Ipsorum itaque Ordinariorum erit, collatis consiliis, examinare qua ratione apta in agendo uniformitas et ordinata colligatio obtineatur.

VII. Superiores religiosi invigilare et curare tenentur, ut sui subditi stricte fideliterque adhaereant iis, quae a Sancta Sede vel ab Ordinariis locorum hac in re praescripta sunt.

Quo autem tam praeclarum opus "reunionis" omnium christianorum in una vera fide Ecclesiaque magis in dies evadat insignita pars universae animarum curae, totusque populus catholicus ipsam "reunionem" instantius a Deo imploret, iuvabit profecto, ut fideles de his quaestionibus conatibusque, nec non de Ecclesiae ad rem praescriptionibus, deque rationibus, quibus eadem nitantur, opportune, v. gr. per Litteras Pastorales, edoceantur. Omnes quidem et praesertim Sacerdotes et Religiosi adhortandi et inflammandi sunt, ut suis orationibus et sacrificiis idem opus fecundare ac promoveri studeant, monendique omnes, nulla alia re efficacius errantibus sterni viam ad veritatem et Ecclesiam amplectendam, quam fide catholicorum probis moribus comprobata.

Datum Romae, ex aedibus S. Officii, die 20 decembris 1949.

✠ FRANCISCUS Card. MARCHETTI SELVAGGIANI, *Secretarius*.

Alaphridus Ottaviani, *Adressor*.

JUDICIAL PROCEDURE IN THE EASTERN CHURCH¹

MOTU PROPRIO

DE IUDICIIS PRO ECCLESIA ORIENTALI (A.A.S., 1950, XLII, p. 5).

PIUS PP. XII

Sollicitudinem Nostram in bonum et profectum Ecclesiae Orientalis convertentes, de matrimonii disciplina apud christifideles eiusdem Ecclesiae servanda die xxii mensis Februarii anno mdcccxxxix Apostolicas Litteras promulgavimus, quarum exitus eventusque conceptae spei Nostrae haud impares esse gaudemus. Solatio enim haud mediocri Nobis fuit a Legatis Nostris in regionibus Orientalis Ecclesiae et a sacrorum Antistitibus, qui ibidem sunt, gratiarum actiones excipere itemque significationes, quae aperte obstabantur inceptum Nostrum communi opinione perutile aestimari. Atqui ab iisdem, dum iteratis votis petebatur, ut quam primum integer legum Codex pro Orientali Ecclesia publicaretur, asseverabatur quoque rem prorsus urgere, ut saltem canones ad ecclesiastica tribunalia spectantes actutum promulgarentur: quodsi enim huiusmodi necessitati obviam non iretur, magnum incommodum et detrimentum christifidelium animis exoriturum esse.

Accedit quoque nonnullas leges processuales in Ecclesia Orientali vigentes, ad antiquorum temporum adiuncta accommodatas, mutatis condicionibus, factas fuisse ad exsequendum difficiles vel minus ad animarum salutem conducibiles.

Non paucae vero omni carebant utilitate, et saepe impedimento erant ad iuris canonici studium, utpote quae vel easdem res crebro recinerent vel aliis, recentiore aetate latis, adversarentur.

Oportet etiam sacra Ecclesiae iura sarta tecta servantur in exercenda iudiciali potestate, quae ad ipsam divinitus data pertinent, itaque compescantur conamina, ibidem hic illic notabiliter prodeuntia, quae civilibus magistratibus huiusmodi iudicia arrogant.

Quibus incommodis et periculis ut afferamus medelam, utque tuendis vel redintegrandis iuribus consulamus in rite peragendis iudiciis, quibus humanae consortionis haud levi in re pax et bonum continentur, Nos attente et cogitate omnibus in Domino perpensis, motu proprio, certa scientia ac de Apostolicae plenitudine potestatis statuimus et decrevimus de supra memoratis causis eos canones iam

¹ See page 257 *supra*.

nunc publicare, qui a Consilio legum Codici pro Orientali Ecclesia conficiendo parati erant.

Canones autem, quos Nos Apostolica auctoritate comprobamus, hi sunt, qui sequuntur.

(Omitted.)

Nos autem per Apostolicas has Litteras motu proprio datas supra recensitos canones promulgamus iisdemque vim legis christifidelibus Ecclesiae Orientalis tribuimus, ubique terrarum hi sunt. Simul ac per Apostolicas has Litteras huiusmodi canones vigere coeperint sua destituentur vi quodlibet statutum, sive generale sive particulare vel speciale, etiam latum a Synodis speciali forma adprobatis, quaelibet praescriptio et consuetudo adhuc vigens, sive generalis, sive particularis ita ut disciplina *de iudiciis* unice iisdem canonibus regatur, neque amplius ius particulare iis contrarium vigorem habeat nisi quando et quantum in iis admittatur.

Ut autem huius Nostrae voluntatis notitia tempestive ad omnes quorum res interest, perveniat, volumus et constituimus, ut Apostolicae hae Litterae motu proprio datae a die 6 Ianuarii, in Epiphania Domini anni 1951, executionem suscipere incipiant, quibuslibet contrariis non obstantibus, etiam peculiarissima mentione dignis.

Datum Romae, die vi mensis Ianuarii, in Epiphania Domini, anno MCML, Pontificatus Nostri undecimo.

PIUS PP. XII

CZECH "ADMINISTRATOR" EXCOMMUNICATED

SACRA CONGREGATIO CONSISTORIALIS

DECRETUM (*Osservatore Romano*, 19 February, 1950.)

Cum Sacerdos Ioannes Dechet officium "Administratoris" vacantis Ecclesiae Neosoliensis¹ e manibus laicorum acceptare acceptatumque inire praesumpserit, Sacra Congregatio Consistorialis praedicto Sacerdoti poenam excommunicationis speciali modo Apos-

¹ i.e. Banska Bistrica.

tolicae Sedi reservatae infligit atque expresse iubet ipsum vitari debere.

Monet igitur clericos ac fideles ut cum praedicto Sacerdote se gerant ad normam canonis 2261 §3 Codicis Juris Canonici.

Datum Romae, ex Aedibus S. C. Consistorialis, die 18 Februarii 1950.

FR ADEODATUS JOANNES

S. R. E. Card. PIAZZA

Episcopus Sabinensis et Mandalensis.

J. Ferretto, *Substitutus a Secretis*.

BOOK REVIEWS

The Limits and Divisions of European History. By Oscar Halecki.
(Sheed & Ward. 10s. 6d.)

PROFESSOR HALECKI of Fordham University, in New York, offers a definition of European history as "the history of all European nations considered as a whole, as a community clearly distinct from any other". Writing from the standpoint of a central European, his governing idea is that Eastern Europe is no less European than Western Europe and, as a Pole, he is not unnaturally at issue with those who hold that between the two there is a basic dualism and that only the Western part is really European, those who speak, in short, of the West as *l'Europe Européenne*. If the theme were that the two Catholic Kingdoms, Poland and Hungary, had all along been outposts of Western culture, derived from Latin and non-German sources, it would doubtless meet with ready acceptance; but the author goes much further. He integrates more or less explicitly all or nearly all the Eastern European lands, with the exception of the Ottoman Empire, and in seeking to balance them, as it were, against Western Europe, claims more for them culturally than Westerners would be disposed to allow, and he seeks this result by basing his argument on a formula. The two main aspects of his case are set forth symmetrically in eight chapters: the chronological limits, the geographical limits, the geographical divisions and the chronological divisions, each of the four aspects in two parts. There is likewise an introductory section: "What is European History?" and a concluding section, "The Basic Problems". The note on the jacket describes this arrangement as "sounding like an academic contribution

to a schematic discussion", and we may add that it certainly does. Everything is stated in general propositions and few readers will be likely to follow the learned author closely without extensive knowledge and an historical atlas. He urges much that few would deny: that the Ottoman dominion in Europe was completely alien to Europeans and to its own European subjects; that the empire of Charlemagne was completely "Western"; that the Kingdom of Bohemia was an intermediary region between Western and Eastern Europe; that Eastern Europe is predominantly but not wholly Slavonic, and so forth. But while making due mention of the Tartar conquests, the Mongol occupation that "left an indelible imprint on the Russian character", like the Ottoman rule in the Balkans, he does not, we think, sufficiently estimate the catastrophic results. Nothing resembling the achievement of the West in law, learning, religion and the arts has ever been seen in Eastern Europe.

Some of the *obiter dicta* seem open to question. Illyricum was not, in the earliest division of the Roman Empire, attached to the Western part. It was then assigned to Galerius, and it was in the later divisions that it was detached from Dacia, Thrace, Macedonia, etc., and placed under a Western emperor. Not everyone will agree that the trial of St Joan of Arc was "typically mediaeval": the ferocious nationalism of her English enemies and the cynical politics of her French enemies played the preponderant part. Whenever the balance of power concept originated, the first effective application of it was when Richelieu intervened in the Thirty Years' War. One of the most important, and the most curious, consequences of the Partitions of Poland was the fact that that crime of the Eastern Powers saved the French Revolution, because fear of what Russia would do behind their backs almost paralysed the military efforts of Prussia and Austria against the revolutionary armies. Nobody, again, can reasonably hold that the Papacy "rapidly regained prestige from the middle of the nineteenth century"; the earliest possible date is the accession of Leo XIII in 1878.

The value of the book is distinctly enhanced by an admirable preface by Mr Christopher Dawson.

J. J. DWYER

Reginald Pole, Cardinal of England. By W. Schenk. Pp. xvi + 176. (Longmans. 15s.)

THIS is frankly history in the guise of biography. The author's theme is a civilization in crisis: Europe at the turning point, in the crucial sixteenth century. That he should focus the whole age in a personal representative is not in itself remarkably original; but that he should

choose for his purpose a figure so "played down" by insular historians is a clear indication of his independence of mind.

Reginald Pole, after all, has the necessary qualifications: he is sufficiently grand in scale, a European figure of the first importance, typical of the Renaissance at its best. He has his share, too, of the weaknesses of his time, the intellectual "blind spots". For the author's purpose this is so much the better. Yet it is no mere historical symbol he gives us, but an arresting personality full of interest in itself: first the brilliant young nobleman, classical humanist and dilettante; the theologian and biblical scholar, a Cardinal at thirty-six—that Piombo portrait with the magnificent beard and fine, sensitive hands; then the all but life-long exile, a figure of tragedy; finally the religious reformer and, reluctantly enough, the ecclesiastical statesman. "*Ut nobilissimus*," wrote St Thomas More of him in his youth, "*ita in omne literarum genere doctissimus, nec virtute minus quam eruditione conspicuus*." In later years, against the background of a corrupt papal court, worldly churchmen and unscrupulous politicians, his virtue and single-mindedness were even more "conspicuous". Yet all the while there was that inner conflict, arising not so much from lack of resolution as from a fastidious aloofness, a natural shrinking from action. By temperament a contemplative, he was impelled at last, by a "time out of joint", to adopt the *vita activa*, become a public figure, and play a leading part in the great crisis of his age.

His influence as a reformer was not confined to the early sessions of the Council of Trent. Much of it—more than Dr Schenk leads us to suppose—was posthumous. Had he been elected Pope, as in 1549 he nearly was, the tempo of the reform might well have been accelerated. In England, as *legatus a latere* and afterwards Archbishop of Canterbury, he was faced with problems that called for all his temper of conciliation, his qualities of charity, patience and breadth of view; and also for something else that was fatally denied him—time. The reforms he instituted could bear no fruit in a couple of years. Pluralism, absenteeism, all the old abuses returned after his death; with the ironical result (as Dr Schenk points out) that "Elizabeth's Church became the only unreformed Church in Europe".

This, unhappily, is Dr Schenk's last book. He died before the final proofs had been revised; but there is probably little he would have wanted to correct. Here and there, perhaps, there is a misplaced emphasis. It may be considered, for instance, that he underestimates the importance of the arch-thug Crumwell, the real originator of the Tudor Gestapo; for during that fateful decade, from 1530 to 1540, it was he, rather than the King, who was Pole's chief an-

tagonist. But the book as a whole is scholarly and balanced, refreshingly unpadding and free from picturesque guess-work. The author's careful research extended to having microfilms made of manuscripts in the Vatican, and also—what an example, this, to other non-Catholic writers!—to taking professional advice on points of theology. There are thirteen plates (including a reproduction of the less well known Arundel portrait), and the text is documented with notes after each chapter. Some of these, perhaps, might have been expanded a little. The Brewer and Gairdner *Letters and Papers* take in such a miscellany of matter that, unless the nature of a particular document is indicated, the reference "L. + P." is not very much help.

Dr Schenk contrasts the respective contributions made to the Counter-Reformation by Pole and Caraffa (afterwards Pope Paul IV), and holds that it was the spirit of Caraffa that ultimately prevailed. Be that as it may, it is a pity he came to discern, as the consequence of this, a "divorce, increased by later encounters and still painfully noticeable in our time, between the best secular thought and the Catholic Church". Here we have, surely, what Matthew Arnold used to call "the note of provinciality"; it is strangely incongruous in a work so generally intelligent and urbane.

A. G. S.

The Life and Revelations of St Gertrude. Virgin and Abbess of the Order of St Benedict. (The Newman Press, Westminster, Maryland. Price \$4.)

THE great Benedictine Abbeys of the Middle Ages, those of women no less than those of men, were not only houses of prayer where monks and nuns vied with the citizens of heaven in singing the praises of God by day and by night, they were also islands of civilization in which sacred and profane letters were cultivated and flourished exceedingly. Thus it came about that when St Gertrude was placed in the school within the walls of the monastery of Helfta, she had every facility for the acquisition of a liberal education. Of her life very little is known and the Benedictine editors of her works¹ assert categorically that she was neither an Abbess nor a Cistercian, as some have claimed. All we know for certain is what can be gathered from her writings. From these we ascertain that she understood the Latin of the liturgical offices which occupied her for so many hours of the day—and of the night too—and that she was

¹ *S. Gertrudis Magnae, Virginis, O.S.B., Legatus Divinae Pietatis, etc. Opus ad Codicum fidem nunc primum editum Solesmensium, O.S.B. Monachorum cura et operâ.* H. Oudin, 68 Rue Bonaparte, Paris, 1875.

able to read the Bible and the Fathers of the Church in the original text.

As St Teresa is the glory of Spain so is St Gertrude the honour of Germany. Actually, to talk like this is out of place, for spiritual geniuses such as these two women are God's gift to the whole world. However, race, upbringing and environment are bound to condition thought and outlook. The outstanding, and most attractive, characteristic of St Gertrude's spirituality is that it is intensely liturgical. The *Opus Dei* is the primary activity of a Benedictine house, no matter what other occupations may fill the day. Now it could hardly be said that the liturgy had any profound influence on the writings of St Teresa. Not that the immortal Spanish mystic was unacquainted with the liturgy; she could not but love it since the heart of the liturgy is the Mass. But it remains that hers is a highly personal and individualistic spirituality, one that does not appear to grow out of the Church's liturgy as does that of Gertrude, whose chief work bears the beautiful title: *Insinuationes Divinae Pietatis*, a title that prepares us for the marvels of divine love and condescension of which the book is the inspiring record.

The work is divided into five books but only the second is from Gertrude's own pen; the rest are a compilation by a member of the community based on the papers of the Saint and on personal recollections. The volume under review is a translation of this work, except the first Book, which is embodied in the preliminary section entitled "Life of St Gertrude". This is no new translation but a reprint of one made some eighty years ago by an Irish Poor Clare: it is accurate and reads very well. One regrets that Gertrude's "Exercises" are not included, for in its pages we hear, as it were, an echo of the wonderful colloquies between Christ and His incomparable spouse.

No less a person than Dom Guéranger gave it as his opinion that St Gertrude's writings surpass those of St Teresa: "Acquainted as she was with the Latin tongue, continually quickened by the reading of Holy Writ and the Divine Office, neither of which hold any obscurity for her, she draws from them a language which seems to us, on the whole, to surpass the immortal outpourings of Teresa who was less familiar with these sources" (Introduction to the *Exercises*, p. xxlv). With great respect for so weighty an authority, it is impossible to agree with him in this instance. Actually, all such comparisons are misleading and unprofitable. There is no real basis for a comparison. Each of these splendid personalities is unique of its kind. But St Gertrude is perhaps the more interesting and the more inspiring of the two at this time when an ever-growing number of

people delight in praying with the Church by means of her liturgical prayer. The reader of this book will perceive at once that the liturgy is the luminous background of St Gertrude's whole existence. Nearly every one of her supernatural experiences befell either on some feast day, at one of the liturgical Hours, or in connexion with some passage in hymn or psalm. The spirit of this admirable daughter of St Benedict rose to the sublimest heights of contemplation on the twin wings of the Scriptures and the Liturgy. Here is the secret of the strong appeal that her writings have made for centuries and will continue to make to the Catholic mind. This reprint is a great boon for all of us, for there is light, guidance and comfort for all in these heaven-inspired pages.

Life and Miracles of St Benedict. Book II of the Dialogues of St Gregory the Great. Translated by Odo J. Zimmermann, O.S.B., and Benedict R. Avery, O.S.B. (St John's Abbey Press, Collegeville, Minnesota. Price \$2.)

AMONG the hagiographical works that have come down to us from the early centuries of the Church the four books of St Gregory's *Dialogues* occupy a very distinguished place. In the first three books the genial Pontiff recounts the lives of divers Italian Saints, just to show that the era of Saints had not come to an end, while in the fourth he treats his readers to a number of what one may, perhaps, be permitted to describe as the most delightful and most edifying ghost-stories imaginable. The whole of the second book is devoted to an account of the life and miracles of St Benedict of whom Gregory is the first biographer as he is also his most distinguished disciple. The title of the books is explained by the circumstance—whether fact or literary device is immaterial—that the work is in the form of a conversation between Gregory and one of his deacons, Peter by name. This literary *genre*, of which antiquity furnishes us with more than one sample (Plato, for instance), has the advantage of enabling the writer to meet some of the queries to which his story may give rise in the reader's mind. By this means, too, practical lessons can be pointed out, and when these moralizings are those of a man like St Gregory, one may be sure that they are neither platitudinous nor gratuitous.

This new translation is the joint work of two American Benedictines and a good piece of work it is. It was, of course, inevitable that the subtle charm of the original would evaporate in the best of translations. St Gregory's style is particularly *nuancé* and many a sentence simply defies translation into our idiom, as, for instance, the

exquisite phrase in which Gregory tells us how Benedict, after his alarming experience at the hands of the wretched monks of Vicovaro, "went back to the wilderness he loved, to live alone with himself in the presence of his heavenly Father" (ch. 3, p. 11). This does not full justice to the pregnant and indeed untranslatable Latin of St Gregory: *tuncque ad locum dilectae solitudinis rediit et solus in superni inspectoris oculis habitavit secum*. Somehow, at least to this reviewer, *solitudo* suggests what "wilderness" does not. I think it is not unconnected with *solus secum*, for which it prepares the reader and which St Gregory explains at length. At any rate, *in superni inspectoris oculis* calls up a different mental picture from the rather flat "in the presence of his heavenly Father".

In the delightful story of the good parish priest who, on Easter Sunday, as he was about to sit down to his well-earned dinner, was bidden by the Lord Himself to go and share his festive meal with His hungry servant all alone out there in the wild gorge of the Anio, the rendering of Benedict's remark, "it must be a great feast to have brought me this kind of visit", unduly dilutes, and in fact misses altogether the exquisite courtesy of the original: *scio quia Pascha est quia hodie videre te merui!*

But these are *minutiae* which one does not note in any fault-finding spirit but just to show what an arduous task it is to render in our idiom the seeming simplicity of a literary masterpiece. To have succeeded in giving us a very readable version is no small achievement. Some judicious footnotes and a very full index enhance the value and usefulness of this beautifully produced little book.

ERNEST GRAF, O.S.B.

Bullarium Anni Sancti. Textus et Documenta (Series Theologica), n. 28. Pp. 159. (Gregorian University, Rome.)

THERE are many publications, all of a popular character, explaining the Jubilee, setting out its conditions, and even hazarding a commentary on confessors' faculties. This Bullarium is purely documentary, and contains the text of all the Bulls promulgating Jubilees since 1300, a most useful and opportune publication which will be of permanent value to all students who have no easy access to the vast Bullaria from which the Jubilee bulls have been extracted. Small details apart, there is a certain consistency in the past about them all in requiring repeated visits to the Roman basilicas, twenty being required in the last ordinary Jubilee of 1925; this year one visit to each suffices. The modern developments occur in determining the

privileged classes capable of gaining the indulgence outside Rome, in the various classes of Jubilee confessors each with slightly different faculties, and in the *Monita* issued by the Sacred Penitentiary for their instruction in absolving from reserved cases. These documents are not printed in this collection which is limited to the Bulls of promulgation.

Directorium Seminariorum (In Sinis). Auctoribus Missionariis Congregationis Immaculati Cordis Mariae. Pp. 745. (Scheut Editeurs, Brussels. 262 fr. or 5 \$.)

OUR impression that the Church in China must necessarily be in a rudimentary condition was corrected some years ago when the text of *Primum Concilium Sinense* (1930) was published, probably the best thing of its kind that has appeared since the Code; and the suspicion that Chinese missionaries could hardly be expected to be in the front rank of theologians and canonists was also shown to be mistaken by the fine treatise *De Matrimonio*, of Fr Payen, S.J., who is among the leading authorities on the subject. All remaining doubts are finally dispelled by this work on seminaries, the joint labour of a number of seminary directors interned at Peiping during the war. It has been approved by Propaganda after being examined by a Roman Commission, and the commendatory letter of the Cardinal Prefect rightly states that the book will be useful not only for the Chinese missions but for all missions. One could go further and recommend it to all seminaries in general.

It must be fairly obvious that it is for each country to work out its own salvation as regards seminary training, whilst being faithful to the common law and the requirements of the Holy See, and we are by no means contending that everything in this book is suited to the conditions, say, of England. Its value is in the ordered arrangement of a vast number of papal directives and counsels, which are not laws indeed but are the result of a vast experience obtained from dioceses all over the world, and therefore claim the serious attention of all who are responsible for training the clergy. The work is extremely well documented, with a good bibliography and index, so that some authoritative guidance on any point of seminary life and discipline can quickly be discovered. Finely printed and produced by a press in Montreal, and in Latin throughout except for an occasional Chinese word in brackets, it is a book which is almost unique in its scope and is assured of a welcome in our seminaries.

Enchiridion De Statibus Perfectionis. I. Documenta Ecclesiae Sodalibus Instituendis. Pp. 651. (Officium Libri Catholici, Rome.)

THE position long enjoyed by Denzinger's famous *Enchiridion* is now shared by a number of others, patristic, historical and canonical, and the value of these collections to the student is beyond dispute. The present volume is printed though not published by the Vatican Press, and without any indication of the compiler's name, but it bears the heading *Collectanea S.C. de Religiosis* and may be taken to have at least a quasi-official character.

The signature of its sections throughout is *Enchiridion Religiosorum*, modified eventually no doubt into *De Statibus Perfectionis* in order to accommodate the recent legislation on secular Institutes, and since it is described as Vol. I we must assume that others will follow. This volume is restricted to documents which regulate the acceptance, training and profession of members, at least two-thirds of its pages being taken up with documents published since Pius IX. All those published before the Code need interpreting in the light of later legislation; but a complete understanding of modern law and practice requires some knowledge of past development, and a useful volume of this kind meets the needs of those who have no easy access to the various *Bullaria* or to conciliar texts such as Mansi.

Many of the documents here reprinted can easily be consulted in *Fontes Iuris Canonici* or in the collected *Acta* (A.S.S. and A.A.S.) of the Holy See; others, such as the encyclical of Pius XI on the priesthood, or the *Motu Proprio* of Pius X on church music, can be had in a number of editions, and one might query the utility of publishing them again since they have only a remote bearing on the immediate purpose of the collection. What everyone will welcome is the inclusion of those elusive texts which are not published at all, except by a periodical here and there, or which are sent direct to Ordinaries for their information, and being entitled "reserved" are not, perhaps, meant to be published at all. We are given, for example, the instruction on frequent Communion, 8 December, 1938, which was partly reprinted in this journal by special permission. Though keeping a vigilant eye on all documents issuing from the Holy See, the present reviewer has seen here for the first time a circular said to have been sent, 2 February, 1945, to seminary professors on the subject of instructing students in the use of the Breviary. By reprinting texts of this kind the anonymous editors of the *Enchiridion* have performed a valuable service.

E. J. M.

Religious Vacation School Manual for Teachers. Grades I and II, 25 cents; Grades VI, VII and VIII, 25 cents. (The Confraternity of Christian Doctrine, 1312 Massachusetts Avenue, N.W. Washington, D.C.)

NEARLY half the Catholic children in U.S.A. attend the secular State schools, and their religious instruction is a permanent problem. One way of solving it is the Religious Vacation School which many parishes run during the summer holidays for a month. Mass at 8.15 every morning except Saturday, then classes and organized games until noon. The staff will be partly regular nun-teachers on holiday, and partly volunteer priests and seminarists and lay-folk; the idea is plenty of instructors with only a few children to each. At least one religious order is entirely devoted to this work, and of course a whole literature of aid-books has grown up. The chief of these in booklet form comes to us from the Confraternity of Christian Doctrine. The lesson-material is simple and businesslike, if a little lacking in contagious inspiration, and there are detailed suggestions for games, for music programme, for visual aids, etc. Also copious book-lists, which seem badly to need revision and bringing up to date. It is all very interesting to English readers, who will start wondering how soon something of the kind will be needed in this country and how far the American methods could be adapted to us.

F. H. D.

The First of the Puritans and the Book of Common Prayer. By Paul R. Rust, O.M.I. (Milwaukee: Bruce Publishing Company. \$3.75.)

By a detailed examination of its origin and development, the author proves that the *Book of Common Prayer* is rooted in what he calls Puritanism: that is, in the determination of Cranmer and his co-reformers to abolish Catholic priesthood and the sacrifice of the altar. There are apparently still a number of high-churchmen on both sides of the Atlantic who like to think otherwise, and Fr Rust sets out to disabuse them. Occasionally his tone becomes a trifle shrill, and every now and then his prose sounds oddly to an English ear, though when he calls Henry VIII a "sanguine tyrant", we have no difficulty in guessing what he means. He establishes his thesis with a scrupulous regard for historical truth, and supplements it with a very useful series of documentary appendices, drawn chiefly from Cardwell's *Annals*.

H. P. R. F.

CORRESPONDENCE

"DEMISSIS AD TERRAM OCULIS"

(THE CLERGY REVIEW, 1949, XXXII, p. 232;
1950, XXXIII, p. 144)

Fr Howell replies:

Of course "Liturgicus" is right. I apologize for having overlooked that rubric. (What a curious rubric it is, by the way! Can anybody explain its origin? If we say "Good morning" to people, we naturally look at them. If we speak a friendly greeting to an assembly, we naturally look towards those whom we address. But when we give the most lovely greeting to our brethren who are about to offer sacrifice with us, we are bidden by this rubric to contemplate the floor!)

So that suggestion which I admitted as a possible solution only out of deference to opponents of the Offertory procession, is successfully ruled out. I am grateful to "Liturgicus". I will be doubly grateful if he can think up something to prove that the other (to my mind) unsatisfactory solution is also illicit—that of making an altar-boy count the intending communicants. For then nothing would be left except the solution which I am urging, namely, some form of Offertory Procession. If there is no alternative to that, then my arguments for it are strengthened.

But I would be triply grateful to "Liturgicus" if he would make some positive suggestion. If he—and other priests—would produce some positive ideas, we might get somewhere. Negative criticism is so easy—and so fruitless; its only fruit can be that which the Pope does not want, namely, stagnation. My complaint is that nothing is being done when the Pope says something ought to be done. My plea is that we ought to be eager to follow the Pope's lead, by thinking out how his wishes can be fulfilled. My protest is against that mentality which reacts to the papal suggestion by thinking out how it can be rendered totally ineffective. My fear is that, as regards this country, the Pope might just as well not have written what he did write. What, then, can we do about it? Who has any positive ideas?

"Laicus" writes:

As one who read with great interest and sympathy Fr Clifford Howell's article on what steps are being taken and could be taken

to implement the Encyclical *Mediator Dei*, as well as the letter of "Liturgicus" in a subsequent issue of THE CLERGY REVIEW pointing out a conflict between one of his suggestions and the existing rubric, may I remark that, if I had been asked whether greater weight was to be attached to rubrics or to the considered and carefully pondered words of the Pope in an Encyclical Letter to the bishops of the world, I should have decided for the instructions of the Holy Father.

"Liturgicus" replies:

Admittedly, in case of a real conflict between an existing rubric and a definite instruction issued by the Holy Father in a subsequent Encyclical the papal instruction will prevail, because it is presumed to be issued in full cognizance of the existing rubric and with the intention of abrogating it. (See Canon Mahoney's comments, THE CLERGY REVIEW, January 1950, p. 58.) In the present instance what is opposed to the existing rubric is not an instruction of the Holy Father but one of Fr Howell's suggested ways of implementing the Pope's desire. And that is not the same thing.

PERMISSU SUPERIORUM

CHURCH AND STATE ABROAD

IV. WHAT HAS HAPPENED IN CZECHOSLOVAKIA

(Continued)

A REPRESENTATIVE selection of the documents coming from the side of the Church in the conflict between the Church and the Communist Government in Czechoslovakia, up to the end of last year, has now been printed in English versions, either in these pages or in those of *The Tablet*. The leading exception is the Pastoral Letter drawn up in Prague on 15 June, 1949, and read in the churches on Sunday, 26 June,¹ which, after its introductory passages, enumerated the grievances of the Church. After recapitulating her basic natural rights and speaking of the institutions which are necessary if she is to perform not only her pastoral office but also a whole range of good works which she has a natural right to be allowed freely to perform—the churches and schools, the orphanages and homes, the libraries and publishing houses—the Bishops wrote:

"These institutions need economic means and material security, without which it would be impossible for the Church profitably to develop her activity for the good of our people and to preserve religious buildings, keeping them worthy and free from deterioration. There was a time when we had everything, at least in so far as was indispensable; and recently everything has been taken away from us.

"In difficult circumstances, overcoming great difficulties and at the price of very heavy sacrifices imposed on your persons and your goods, the Church was enabled to establish social and educational institutions, schools, seminaries, periodicals, reviews and a whole range of societies—all for you and for your children, in order that, thanks to all these foundations, there might flourish the conditions necessary for the development of the spiritual life. What has become of all these possessions

¹ A French version of this, which appears to be textually precise and from which the extracts given here are taken, may be found in *Documentation Catholique* for 6 November last. It is a vital link in the documentary chain, but as this French text, the only one available to us at present, is itself a translation from the Spanish of the review *Christus* of the Mexican Jesuits, it seems hardly worth making a third translation into English. This Pastoral, moreover, is about 4000 words long, and *in extenso* would occupy all this feature's allocation of space for one month. There are extracts from an agency report, not very precise but substantially accurate, in *The Tablet* of 2 July last. It should be added here that the first of the documents printed in *The Tablet* of 25 June is wrongly described as a Pastoral Letter; it is an *ad clerum* that was drawn up on the same occasion, when the Hierarchy met in Prague on 15 June. What is described as an *ad clerum* in *The Tablet* of 2 July is in fact a directive post-script to the Pastoral Letter.

CHURCH AND STATE ABROAD

of ours? Who has caused them to disappear in such a short time? There is no need, dear brethren, to present you with the evidence. All is being done publicly. Look around you, see what is taking place, and you will immediately understand that the Catholic Church in Czechoslovakia is being poorly, very poorly rewarded for the centuries of service rendered to the nation, for her manifold contribution to culture and to charity, for her loyalty towards the people, for her courage and her sufferings during the German occupation. Alas! Here she stands, despoiled, deprived of the greater part of her liberties and her rights, calumniated, miserable, persecuted both secretly and openly. . . .

"The Church has seen herself stripped of her last property rights: there has not even been left to her the minimum of goods mentioned in the law. Numberless are those priests who do not receive their stipends."

Not a great deal had been heard, when these words were written, of the impending plan for giving money to those priests who would accept it as the price of their subservience: the passage is a complement to the two later documents which we print this month, reflecting the way in which the poverty was deliberately created before the riches were contemptuously offered.

This Pastoral Letter went on to describe how the entire Catholic Press had been suspended; how all books, including works of piety, had to be submitted to Government censors before they could be published; how all meetings of Catholics, and all pastoral instruction, were forbidden outside the churches, "under the most rigorous penalties"; how the parish schools "virtually exist no longer", to the great dismay of Catholic parents; how "pressure has been brought to bear on parents to make them withdraw their children from the Catholic schools, while threatening them with grave sanctions if they should not do so"; how all religious instruction, on whatever occasions, was fast becoming impossible; how even in the theological faculties compulsory lectures in "social science" had been introduced: how many religious houses, of both men and women, had been seized, particularly those concerned in any way with the education of the young, whether in religion or in the world; how religious processions had been interrupted in some places, to the point of blasphemy; and how the deliberations of the Bishops themselves had been interfered with. On the latter point, after describing what happened at Dolny Smokovec in March, when a Conference of the Bishops had to adjourn because secret microphones had been found hidden in the room where they were meeting,¹ this Pastoral said:

"Moreover, the most recent episcopal conference, held in Prague, was interrupted when the police burst in.

¹ See *THE CLERGY REVIEW* for January 1950, xxxiii, p. xii.

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The police interruption referred to here, when the Chancellor of the Archdiocese of Prague was arrested, took place in the afternoon of Wednesday, 15 June, during the very meeting at which this Pastoral Letter was drawn up. That raid and search of Mgr Beran's residence inevitably recalled the occasion, shortly before Christmas, 1948, when Cardinal Mindszenty's palace at Esztergom was raided, when the police claimed to find the celebrated container of documents to bear out, with such fortuitous exactitude, the accusations which Communist propaganda had been making against His Eminence for a year past. No less reminiscent of what had happened in Hungary was the threatening broadcast made by M. Zapotocky, the Communist Premier of Czechoslovakia, on 14 June, the night before the raid, when he said:

"The Government will not tolerate their (the Bishops') terrorizing of, and destroying freedom of political opinion for, patriotic Catholic priests. Law and justice must be used against marauders, provocateurs, and those who call for disorder and unrest."

He accused Mgr. Beran of "ordering the priests to take part in political activity against the Republic, although he has forbidden them to work for us". Precisely the same charges had been brought against Cardinal Mindszenty. The detailed parallels were many. One of Mgr Beran's secretaries was arrested, as the arrest of Cardinal Mindszenty had been preceded by the arrest of his secretary, Dr Zakar. And to complete the comparison, Mgr Beran himself, plainly anticipating early arrest, went on Saturday, 18 June, to preach in the church of the Premonstratensian Fathers at the Strahov monastery,¹ in the outskirts of Prague, where he said, echoing very closely the classic words of Cardinal Mindszenty before arrest:

"Perhaps very soon you will hear on the wireless all sorts of things concerning me. You may hear that I have made a confession, or other

¹ Where, in consequence, the Abbot was arrested immediately afterwards. The Abbot, Dom Jarolimek, was a well-known figure in the life of the Church in Czechoslovakia, whom some had expected to be appointed to the See of Prague in 1946 when in fact Mgr Beran was appointed.

CHURCH AND STATE ABROAD

statements.¹ I hope you will trust me. If one day you learn of the conclusion of an agreement between the Church and the State, you should know that I would never conclude an agreement which would infringe the rights of the Church and of the Bishops. It is possible that one day you will learn that I have concluded an agreement, or that I have given my consent. Maybe you will hear it from the wireless, morning and night. But I declare before God and before the nation that nobody will force me to do that. . . . No true Catholic can exist where the Bishops are not with the Church. . . . You know, I would like to talk to you from here, but I will not. I do not want you to be persecuted. I do not know how often I shall be allowed to speak from the pulpit in the future. . . ."²

In fact he has not been allowed to do so again. On the following morning, Sunday, 19 June, he sought to speak from the pulpit of his own cathedral in Prague, but was shouted down by Communist hooligans, who caused such a disturbance that the cathedral required re-consecration. Since that day he has not again appeared in public, and, although he has once or twice been among the signatories of collective documents from the Hierarchy, that has only been when it has been possible to convey copies to him for signature. He is, without question, confined to his residence. Note the words of the Pastoral Letter quoted above: the police had "*completely suppressed the liberty*" of the Archbishop. Moreover, there were many indications to make it obvious that he was not in control of his own household, as, for instance, the fact that a flag flew at half-mast over his residence when M. Dimitrov, the former secretary of the Cominform, died; Dimitrov was never a Catholic, and it is unlikely that the Archbishop would voluntarily have shown public mourning, whatever prayers he may have said.

During the police raid on 15 June the keys of all the curial offices were seized, and State officials took possession, under the direction of Dr Miroslav Houska, who installed himself permanently as the guardian of the Archbishop and the representative of the Government. These officials began without delay to send circulars to the clergy, and to issue other documents, all on the official notepaper of the primatial See, and all sealed with the Archbishop's seal. On Saturday, 18 June, telegrams purporting to come from the Archbishop were sent to the clergy, saying that the new Pastoral Letter, from which we have quoted above, was cancelled and should not

¹ Mgr Beran clearly thought it possible that statements might be forcibly extracted from him in prison, as Cardinal Mindszenty had also, with all too good reason, expected. We have recently had the British Foreign Office speaking more categorically of these techniques of forcing "confessions", in connexion with the "trial" of Mr Sanders in Budapest.

² Text from the British United Press.

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be read in the churches. The very *imprimatur* on new publications had henceforward to be regarded with suspicion, as possibly a forgery. A similar raid was made on the residence and curial offices of the Archbishop of Olomouc, Metropolitan of Moravia.¹

The news of what had happened in Prague quickly spread, and served to strengthen the resolve of the faithful to stand firmly, as they were exhorted in this Pastoral Letter, which was read in most churches on 26 June. In some places there were disturbances when police attempted to prevent parish priests from reading it. There were many serious "incidents", especially in parts of Slovakia, of which, despite all governmental precautions, authentic news reached the outside world. There were also many indications that the Government was taken aback by the warmth of the reaction, both at home and abroad. The campaign was steadily developed to separate the faithful and the clergy from the Bishops and the Holy See and to force them into an amenable apostasy with the aid of the spurious "Catholic Action" organization of the regime, of which we took note in these pages in February. The *chargé d'affaires* of the Holy See, after suffering a number of indignities while travelling in Slovakia, was recalled to Rome for consultation, and the opportunity was taken to deny him a visa to return and so to break the Holy See's last direct contact with the country.² There was, however, no dramatic new development of major significance until the autumn, when the new Bills for disciplining the Church were brought in on 14 October and became law on 1 November. The first of the two documents which we print this month is the *ad clerum* in which the Hierarchy gave directives to the parish clergy on how they should behave in view of these laws;³ and the second is a memorandum signed by representatives of the clergy and circulated through the parishes in the weeks which preceded their passage into law.⁴

We have therefore given in these pages, in this and the three previous issues, a fairly complete *aperçu générale* of the developments in Czechoslovakia up to the end of last year.

J. M. D.

¹ We have the detailed stories of what happened in Prague and Olomouc, but it appears that similar seizures of diocesan offices took place all over the country: see paragraph 7 of the Hierarchy's Memorandum to the Government written five months later, on 17 November, printed on p. xvii of *THE CLERGY REVIEW* for February: "We ask for the return of the offices of which they have taken possession."

² Save for the Secretary to the Nunciature, Mgr Ottavio de Liva, the news of whose expulsion reaches us on 17 March.

³ A text of this is printed in *The Tablet* for 29 October, but the present text is more exact.

⁴ This is printed as an example of the attitude of the parish clergy, like their memorandum printed here last month. There are other equally striking examples, e.g. those reported in *The Tablet* on 23 and 30 July.

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A LETTER "AD CLERUM"

INSTRUCTIONS TO THE CLERGY SENT BY THE ARCHBISHOPS
AND BISHOPS OF CZECHOSLOVAKIA
FOLLOWING THE MEETING OF THE HIERARCHY IN PRAGUE
ON 21 OCTOBER, 1949

PEACE be unto you, beloved brethren in Christ.

You are waiting for words of guidance in these momentous days. We, the Bishops and Ordinaries, have met for discussion, and we send you our heartiest greetings, together with words of essential guidance in the situation in which you have been placed as a result of the enactment of laws which interfere with the vital affairs of the Church, and thereby interfere with our episcopal and your sacerdotal activity.

You have unanimously rejected the schismatic so-called "Catholic Action". God knows that the people are proud of you, and we thank you. You deserve no less respect and gratitude because you have not let yourselves be tempted into expressing your approval of the announced stipend adjustments, which were needed by many of you, if this meant the surrender of your freedom and the subjugation of the Church. Loyalty to the Church, and to her religious freedom, is more important to us than any stipend adjustment. You will know that we have fatherly feelings towards you, and that we wish you a just social improvement. This is a stipend adjustment that has been agreed on without regard to our common wishes or to the recommendations that we clearly expressed, and if you, with our knowledge, accept the raised stipends, this is the result of the pressure of external circumstances. You are changing nothing in your magnanimous attitude, your material unselfishness, or your unshakeable loyalty to the Church, for you gave proof of these long before the law in question was enacted.

Our common fears for the freedom of the Church have been increased by the enactment of the law for the establishment of a State Office for Church Affairs. In the knowledge of the sacrifices of the highest order which the Catholic people and their priests have laid on the altar of the fatherland by their suffering, their work and their moral standards, and in view of the undeniable fact that Holy Church has been the mother of the most beautiful possessions of the nation, we deeply regret that such laws should have been enacted, which conflict with the Constitution of the Republic, for they are directed against the freedom of the Church.¹ The legal status and administration of the Church has been changed and violated without any previous negotiation with the Church. As a result of all this, and as the fruit of unanimous agreement, we give you these directions:

I. According to Clause 20 of the Government Ordinance, an oath of loyalty to the Czechoslovak Republic, with the following wording, will be laid before you:

"I [name], promise before God that I will be loyal to the Czechoslovak Republic and to its People's Democratic Order, and that I will not undertake anything that would be against its interests, security and integrity. As a citizen of the People's Democratic Republic I shall conscientiously fulfill my duties, which arise from my position, and I will strive according to my strength to support constructive efforts that are directed towards the prosperity of the Czech and Slovak people."

The promise is to be made before God,² and the consequence of this is that whatever you promise and whatever the State demands from you must be

¹ We pointed out here in February how easy it is for the Bishops to cite provisions of the new Constitution, and of other laws, in support of their own case, as here where they are merely claiming a basic freedom of religion.

² The wording of the oath as given here requires a "promise before God"; but it is interesting to find an English version of it given in *Prague News Letter*, an official propaganda sheet published from Prague XII, Stalinova 3 (Vol. VI, No. 3, 2 February, 1950) which corresponds to this version in all things save that it omits the Name of God and begins: "I promise on my honour and conscience. . . ."

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compatible with the inalienable rights which originate directly from God, on Whose standards, as expressed in the Ten Commandments, every valid law must depend. Therefore our conscience dictates that we should add to the formula of the promise this verbal or written reservation:

*"On condition that it is not contrary to the natural rights of man."*¹

II. So far as the new stipends are concerned, we proclaim:

The Bishops and Ordinaries will not accept the newly adjusted stipends, which are prepared also for them. For these stipends, and the questions connected with them, like the establishment of the new State Office for Church Affairs—without doubt a matter of far-reaching significance today—were not negotiated with them, as should have been an obvious preliminary necessity. We rely on the assistance of the providence of God, into Whose service we have given ourselves completely.

You, however, will not be acting against your conscience and your priestly honour, which you have unmistakably proved in this matter, if you accept the newly adjusted stipends. In the first place it is necessary to protect you from the possible unpleasant consequences and to preserve you for the spiritual care of the faithful. In the second place it is necessary to take into account that your stipend is a well-earned reward for your devoted work for the welfare of the people. The State intends to remunerate you for from eight to ten hours' teaching at school, and as compensation for payments in kind which have been abolished. And, finally, it must be remembered that the pay, especially in the case of those who are unmarried,² increases taxes. However, make this declaration to your Ordinaries:

"I declare that I have accepted the newly-adjusted stipend because this is an ordinance which has gained legal validity. By accepting this stipend, however, I am not taking upon myself any obligation which would be in conflict with my priestly conscience or with ecclesiastical law. I declare again that the spiritual interests of the Church and the undisturbed freedom of my priestly work are more important to me than the material security of my existence."

III. If we are invited to do so, we are prepared to appoint representatives on the Committees for Church Affairs which are being formed in connection with the regional National Committees. We would do this in the same manner in which in the past we sent representatives to the Provincial School Commissions of Bohemia and Moravia. Should any priest, however, accept an appointment to such a Committee without our consent, action will be taken against him. The measures prescribed by Canon Law would have to be adopted against those disobeying us in this matter.

In conclusion, we wish to thank you for your inflexible loyalty to the Church, as it has been shown up to now, and we charge you to be mindful of the fact that it is necessary also in the future to keep an absolute unity and to trust firmly in the help of God. In recent times, in defending the rights of the Church, you have suffered much. Scores of the finest among your brethren are languishing in prison. We have a fatherly sympathy with them in their sufferings; we pray for them, and we ask you to remember them in your priestly prayers, as well as by *orationes pro incarceratis* [at Mass]. Your courage, your sterling character, and your incorruptibility are a guarantee to God, to the nation and to us, that, with the help of God, you will remain loyal also in the future to your priestly mission and to the welfare of the people and of our fatherland. We are constantly linked with you in our

¹ The present form of reservation to the oath of loyalty was later amended; in the second of the two documents printed in this section of THE CLERGY REVIEW last month (p. xiv, par. VI), a¹ letter *ad clerum* dated just four weeks later than the present one, the saving clause has become: "*On condition that it is not contrary to divine and ecclesiastical laws and the natural rights of man.*"

² The new laws make no distinction between the Catholic clergy and the clergy of other confessions, and since the Protestant clergy are usually married the rise in a stipend, taxable on a system including family reliefs, is more real in their case than it is for the celibate Catholic clergy. The Bishops may also be thinking in this phrase of the Catholic priests of the Eastern Rite, who are sometimes married.

CHURCH AND STATE ABROAD

prayers, and we bless you and your work in the name of the Father, and of the Son, and of the Holy Ghost. Amen.

[The signatures are the same as those appearing at the end of the Memorandum of the Hierarchy printed in THE CLERGY REVIEW for February 1950, save that the names of Mgr Beran, Archbishop of Prague, and, for some reason, Mgr Vojtassak, Bishop of Spis, are absent. Mgr Beran did not attend the meeting of the Hierarchy at which this letter was drawn up.]

MEMORANDUM ADDRESSED TO THE GOVERNMENT OF THE CZECHOSLOVAK REPUBLIC BY THE CATHOLIC CLERGY: AUTUMN 1949

WITH the consent of all the Bishops, the clergy declare that they have no intention of accepting the new law concerning the provision of costs arising from the personal and material needs of the Church and of the religious organizations, and that the representatives of the parish clergy have unanimously decided to publish the following declaration and to submit it to the Government of the Czechoslovak Republic:

I. The clergy recognize with gratitude that the Government of the Czechoslovak Republic agrees, as is the fact today, that the social position of the clergy does not correspond to the educational work and the other tasks which they accomplish for the common good and for the supreme interest of the nation.

II. Nevertheless, the projected law will ameliorate the social position of the clergy at the price of an independence formerly assured for us by the Church lands. It makes the spiritual task of the clergy wholly dependent on political agencies and interests, as is brought out in Article X of the projected law. That is why the clergy declare publicly that they will only accept ecclesiastical offices at the hands of a prelate of the Church who is free in his decisions.

III. The project designed to ameliorate the position of the clergy and to increase the material contribution to the activity of the Church gives the unfavourable impression that the Church is [thought to be] accepting with satisfaction a compensation for the goods and the lands which she lost, against her will, as a consequence of the unilateral intervention of the State and without any preliminary agreement with the Holy See.

IV. Increased stipends for the clergy are being proposed at a time when, for various economic reasons, it is being thought possible that it may be necessary to reduce the wages of workers and the allocations to those living on pensions. In such circumstances the clergy willingly renounce the benefit of the increases proposed by the new law, and respectfully demand that the social position of the workers and pensioners shall be maintained at the present level or, better still, improved.

V. One article, the seventeenth, threatens very grave punishments even in the case of a very slight infringement, in such a way as would in extreme cases be both anti-social and unjust. It is necessary, in any case, to reject this.

VI. The clergy will be satisfied if, after an agreement with the higher prelates of the Church, the fundamental law on the *congrua* is maintained, save that it should be adjusted for special cases; if the repair of religious monuments of an historical importance is financed; and if the clergy are provided for according to the needs of the Church.

VII. We demand in particular an integral respect for and maintenance of the religious freedom of the people and the freedom of the clergy to carry out their priestly tasks and to pursue their religious purposes, which look to the eternal and temporal well-being of our people.

[There are no signatures]

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